

3-9-2010

Knipe Land Co. v. Robertson Clerk's Record v. 4 Dckt. 37002

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COPY

LAW CLERK

Vol 4 of 14

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Knipe Land Company, an Idaho Corporation,
Plaintiff/Appellants,

VS.

and
Richard A. Robertson and Johnnie L.
Robertson, husband and wife; and
Robertson Kennels Inc., and Idaho Corporation
Defendant/Respondents,

VS.

John Knipe, an individual,
and
ThirdParty Defendant/
Appellant.

*Appealed from the District Court of the Third
Judicial District for the State of Idaho, in and
for Payette County*

Hon. Stephen W. Drescher District Judge

Mark Geston

Attorney for Appellant

Robert Wetherell

Attorney for Respondent

Filed this _____ day of _____, 20____

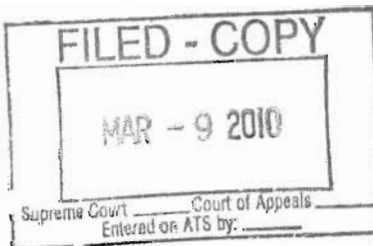
Clerk

By _____ Deputy

CAXTON PRINTERS, CALDWELL, IDAHO 168330

37002

Volume 4



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Payette County Case Number: CV-2008-0682

Idaho Supreme Court Number: 37002-2009

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Payette County Case Number: CV-2008-0682

Idaho Supreme Court Number: 37002-2009

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- C) **Agent's Acknowledgment:** Agent has informed the Sellers of the Sellers' obligations under 42 U.S.C. 4582(d) and is aware of their responsibility to ensure compliance.
- D) **Certification of Accuracy:** Parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by each is true and accurate.

- 19) **MOLD DISCLOSURE:** All Buyers of Idaho properties acknowledge the following: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller, Seller's Agent or Buyer's Agent cannot and does not represent or warrant the absence of mold. It is the Buyer's or Tenant's obligation to determine whether a mold problem is present. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent or lease contingent upon the results of that inspection. A Seller, Seller's Agent or Buyer's Agent who provides this Mold Disclosure Statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent or lease. The undersigned, Seller and/or Seller's Agent disclose that they have knowledge that the building or buildings on the property have mold present in them. This disclosure is made in recognition that all inhabitable properties contain mold, as defined by the Idaho Mold Disclosure Act (any mold, fungus, mildew or spores). The undersigned is not representing that a significant mold problem exists or does not exist on the property, as such a determination may only be made by a qualified inspector.

If Seller knows a building located on the property has been tested for mold, Seller has previously provided or with this Disclosure provides the Buyer a copy of the results of that test (if available) and evidence of any subsequent mitigation or treatment.

The undersigned Buyer, Buyer's Agent or Statutory Broker acknowledges receipt of this Disclosure, the test results (if available) and evidence of subsequent mitigation or treatment. The undersigned Buyer agrees that it is his responsibility to hire a qualified inspector to determine if a significant mold problem exists or does not exist on the property. Buyer further acknowledges that the Seller, Seller's Agent, Buyer's Agent

and/or Statutory Broker, who have provided this Disclosure, are not liable for any action based on the prestate of or propensity for mold in the property.

- 20) **RADON DISCLOSURE:** Pursuant to the Idaho Radon Control Act, the Sellers hereby provide to the Buyers the following disclosure: RADON GAS; Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal guidelines have been found in buildings in Idaho, additional information regarding radon and radon testing may be obtained from your county or state public health unit. This property has not been tested for radon and radon mitigation treatment has not been done on this property.
- 21) **MEGAN'S LAW DISCLOSURE:** Certain individuals are required to register their address with the local law enforcement agencies as part of Idaho's Sexual and Violent Offender Registration Act. In some communities, law enforcement officers will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Idaho Department of Justice in Boise, Idaho, and the probation officers assigned to the area.
- 22) **NOXIOUS WEEDS DISCLOSURE:** Buyer of property in the State of Idaho should be aware that this property contains noxious weeds. The laws of the State of Idaho require owners of property within this State to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County Extension Agent or Weed Control Board.
- 23) **CONFIDENTIALITY:** Buyer and Seller shall not disclose any terms or provisions of this Agreement to any other Real Estate Broker, Real Estate Agency Appraiser or to any persons not party to this Agreement, except for those professionals who are designated or approved in writing by both Buyer and Seller. The terms of this paragraph shall survive closing.
- 24) **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement and all clauses herein.
- 25) **ATTORNEYS' FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs. Buyer shall pay for preparation of legal documents necessary to close transaction, as well as any due diligence in regards to contingencies. Seller shall pay its own legal costs for review of documents.
- 26) **NOTICE:** Any notice in writing required to be given hereunder shall be completed when deposited in the United States Mail, return receipt requested, postage prepaid and addressed to the other party at the parties addresses listed in this Agreement unless otherwise notified in writing of a change of address.

- 27) **COUNTERPARTS:** This Agreement may be executed in counterparts, whether original, facsimile or email copies, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 28) **ACKNOWLEDGEMENT:** By their execution of this document, all Parties to this Agreement acknowledge they have read and fully understand the Terms and Conditions stated herein and, furthermore, acknowledge they have been advised to seek legal advice.
- 29) **ACCEPTANCE:** Buyer agrees to purchase the above-described property on the terms and conditions set forth in the above offer and grants to Buyer's Broker until Five o'clock (5:00) P.M. MDT on the 21st of September, 2007 to secure Seller's written acceptance.

SELLER:

BUYER:

DATED this 14 day of Sept, 2007

DATED this 24th day of Sept, 2007

Robertson Kennels, Inc. &
Johnnie & Richard Robertson

MidAmerican Nuclear Energy Company

Richard A. Robertson
By: Richard A. Robertson President
8701 Little Willow Road
Payette, ID 83661
Phone: 208-642-2994

Bill Fehrman
By: Bill Fehrman, President
666 Grand Avenue
Des Moines, IA 50309
Phone: 515-281-2326

Johnnie L. Robertson
Johnnie Robertson

Richard A. Robertson
Richard Robertson

SELLER'S BROKER:
DATED this ___ day of ___, 2007

BUYER'S BROKER:
DATED this ___ day of ___, 2007

JOHN KNIFE/Seller's Broker
Knife Land Company, Inc.
P.O. Box 1031
Boise, ID 83701
208-345-3163 (Office)
208-344-0936 (Fax)
208-890-1901 (Mobile)

MARK NOREM/Buyer's Broker
Real Estate & Livestock Broker
PO Box 1285
Big Timber MT 59011
406-932-4606 (Office)
406-932-4605 (Fax)
406-930-4606 (Mobile)

COUNTER OFFER

TO AGREEMENT TO SELL AND PURCHASE

(Including Earnest Money Receipt)

DATED 9/24, 2007

**MID AMERICAN NUCLEAR HOLDING COMPANY - BUYER AND
RICHARD AND JOHNNIE ROBERTSON - SELLER
AND ROBERTSON KENNELS, INC. - SELLER**

1. The purchase price shall be \$6,000,000. Terms are cash at closing.
2. Section 3, Paragraph C, Page 2 shall be changed to \$300,000 shall be paid December 31, 2007, instead of January 8, 2008. In addition, this Paragraph shall state that this money on deposit paid shall be called "down payment on contract."
3. Property shall be purchased with three (3) separate contracts. The ranch owned by Robertson Kennels, Inc., located at 8719 Little Willow Road, Payette, Idaho, shall be rewritten on its own contract at a purchase price of \$3,500,000. The Ranch owned personally located at 8701 Little Willow Road, Payette, Idaho, shall be rewritten on its own contract at a purchase price of \$500,000. ~~THE RANCH OWNED PERSONALLY LOCATED AT 8701 LITTLE WILLOW ROAD, PAYETTE, IDAHO, SHALL BE PURCHASED ON ITS OWN CONTRACT AT A PURCHASE PRICE OF \$500,000. THE RANCH OWNED BY ROBERTSON KENNELS, INC., LOCATED AT 8719 LITTLE WILLOW ROAD, PAYETTE, IDAHO, SHALL BE PURCHASED ON ITS OWN CONTRACT AT A PURCHASE PRICE OF \$3,500,000.~~ personal ranch, four acres and the blue house shall be purchased on its own contract for \$500,000. Nonrefundable earnest money paid or money on deposit paid shall be prorated over the three properties and credited to buyer if and when the property closes as the purchase and sale agreements are written. RJR
J.L.R.
4. Page 1, Section 3, Paragraph A shall state that the initial earnest money is non-refundable money on deposit upon receipt by escrow or upon receipt of seller.
5. Page 2, Section 3, Paragraph C shall state the additional \$300,000 deposit is a nonrefundable deposit to be released as nonrefundable earnest money, also known as money on deposit, at time it is received by title company or by the seller.
6. Page 8, Section 9 shall also state Buyer and Seller agree that they may be willing to discuss renewal or extending possession.

Seller

Robertson Kennels, Inc.

Richard P. Robertson, President

Date: Sept 21, 2007

Seller

Richard P. Robertson

Date: Sept 21, 2007

Seller

Johnnie L. Robertson

Date: Sept 21, 2007

7. Page 10, Paragraph 15 shall state that both Buyer and Seller reserve the right of specific performance.
8. The real estate is located in Idaho. Therefore, all aspects of the purchase and sale agreement and all aspects of related contracts shall be governed by Idaho law.
9. Brokers have made no warranties or representations to buyer or to seller relied upon by the other. Buyer and seller agree to make their own independent investigation of each other, the property, zoning, water rights, permits, and of the transaction -- independent of the brokers. The property is being sold "as is". There is a buried gasoline storage tank on the ranch and hearsay that there may have been an old Indian burial ground with graves and artifacts that were removed by the State of Idaho.
10. This offer is binding on buyer and seller if accepted on or before September 24, 2007, at 4:00 PM MST. Seller reserves the right to withdraw this counter offer at any time if another offer is received or for any reason prior to buyer signing and accepting.

ACCEPTED

| | | |
|--------|--|----------------------------|
| | <u>William J. Fehman</u> | |
| Buyer | <u>[Signature]</u> | Date: <u>9/24/07</u> |
| | <u>Robertson Kennel, INC</u> | |
| Seller | <u>Richard F. Robertson, President</u> | Date: <u>Sept 21, 2007</u> |
| Seller | <u>Richard F. Robertson</u> | Date: <u>Sept 21, 2007</u> |
| Seller | <u>Johanne L. Robertson</u> | Date: <u>Sept 21, 2007</u> |

COUNTER OFFER

TO AGREEMENT TO SELL AND PURCHASE

(Including Earnest Money Receipt)

DATED 9/24, 2007

**MID AMERICAN NUCLEAR HOLDING COMPANY - BUYER AND
RICHARD AND JOHNNIE ROBERTSON - SELLER
AND ROBERTSON KENNELS, INC. - SELLER**

1. The purchase price shall be \$6,000,000. Terms are cash at closing.
2. Section 3, Paragraph C, Page 2 shall be changed to \$300,000 shall be paid December 31, 2007, instead of January 8, 2008. In addition, this Paragraph shall state that this money on deposit paid shall be called "down payment on contract."
3. Property shall be purchased with three (3) separate contracts. The ranch owned by Robertson Kennels, Inc., located at 8719 Little Willow Road, Payette, Idaho, shall be rewritten on its own contract at a purchase price of \$3,500,000. The Ranch owned personally located at 8701 Little Willow Road, Payette, Idaho, shall be rewritten on its own contract at a purchase price of ~~\$2,500,000~~ ^{\$2,000,000} And from the personal ranch, four acres and the blue house shall be purchased on its own contract for \$500,000. Nonrefundable earnest money paid or money on deposit paid shall be prorated over the three properties and credited to buyer if and when the property closes as the purchase and sale agreements are written.
4. Page 1, Section 3, Paragraph A shall state that the initial earnest money is non-refundable money on deposit upon receipt by escrow or upon receipt of seller.
5. Page 2, Section 3, Paragraph C shall state the additional \$300,000 deposit is a nonrefundable deposit to be released as nonrefundable earnest money, also known as money on deposit, at time it is received by title company or by the seller.
6. Page 8, Section 9 shall also state Buyer and Seller agree that they may be willing to discuss renewal or extending possession.

| | |
|----------|-----------------------|
| Exh. No. | 27 |
| Date | 8-25-08 |
| Name | R. Robertson |
| | M & M Court Reporting |

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
7311 Potomac Drive
Boise, ID 83704

September 26, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000.00 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.

Johnnie Robertson
Johnnie Robertson
Richard Robertson
Richard Robertson

Robertson Kennels, Inc.

By: Richard Robertson
Is: President

Knipe Land Company Inc.

Broker

Exh. No. 28
Date 8-25-08
Name R. Robertson
M & M Court Reporting

1

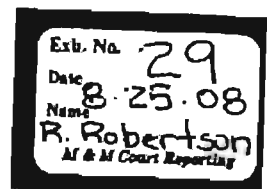
YAHOO! MAIL
Classic

Print - Close Window

From: RobertsonRanch@aol.com
Date: Wed, 3 Oct 2007 09:38:18 EDT
Subject: Re:ranch property
To: ronasttrain@yahoo.com

Rowena;
Did they get everything straight with Mark on the legals on the
property?please let me know.thank you.
Richard Robertson

See what's new at AOL.com and [Make AOL Your Homepage](#).



606

RS0055

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Print - Close Window

Date: Tue, 09 Oct 2007 15:01:24 -0600
Subject: FW: Little Willow Ranch Legal Description
From: "John Knipe" <john@knipeland.com>
To: "Rowena Strain" <rowena@knipeland.com>, "sellerfile@knipeland.com" <sellerfile@knipeland.com>, "Sarah Klotthor" <sarah@knipeland.com>, "robertsonranch@aol.com" <RobertsonRanch@aol.com>

Please review. Thank you, John

----- Forwarded Message

From: Mark Norem <mark@marknorem.com>
Date: Tue, 9 Oct 2007 14:57:03 -0600
To: Amy Bishop <amybishop@firstam.com>, John Knipe <john@knipeland.com>, Cindy Crane <cindy.crane@pacificorp.com>
Subject: Little Willow Ranch Legal Description

Folks:

Please find revised legal description for the Little Willow Ranch.

This will replace the legal description sent separately earlier, as well as the legal description attached to the Little Willow Ranch Purchase & Sale Agreement just sent to John and Cindy.

Thank you,

MARK

Mark Norem Real Estate & Livestock Broker
116 W. 2nd Ave., P.O. Box 1285
Big Timber, MT 59011
406-932-4606 Phone
406-932-4605 Fax
406-930-4606 Mobile
mark@marknorem.com
Licensed Real Estate Broker in MT, WY, ID, ND, SD, OR

----- End of Forwarded Message

Attachments

Files:

Little Willow Ranch Legal.doc (23k) [Preview]

JH

AGREEMENT TO SELL AND PURCHASE
(Including Earnest Money Receipt)

| | |
|-----------------------|--------------|
| Exh. No. | 30 |
| Date | 8.25.08 |
| Name | R. Robertson |
| M & M Court Reporting | |

Dated: October 21, 2007

THIS IS A LEGALLY BINDING CONTRACT. SEEK COMPETENT LEGAL ADVICE.

MidAmerican Nuclear Energy Company of 666 Grand Avenue, Des Moines, IA 50309, (hereinafter called "**Buyer**") agrees to purchase, and

Robertson Kennels, Inc., of 8719 Little Willow Road, Payette, Idaho 83661 (hereinafter called "**Seller**") agrees to sell the following real estate and improvements, hereinafter referred to as "**Purchased Property**", in the Counties of Payette and Washington, State of Idaho more particularly described as the **LITTLE WILLOW KENNEL RANCH**, see attached Exhibit A, which legal description shall be confirmed by Title Company.

- 1) **THE TERMS AND CONDITIONS** set forth in this Agreement to Sell and Purchase contain all of the terms and conditions of the offer made by Buyer for the Real Property described in this Agreement.
- 2) **ASSIGNMENT:** Buyer and Seller acknowledge that each party reserves the right to transfer or purchase the property by use of a IRC 1031 Tax Deferred Exchange and each may wish to assign all or a portion of their rights to this Agreement to another entity or person, for this purpose prior to Closing. Each shall be responsible for notifying respective Representatives and the Closing Agent as to how title is to be transferred in sufficient time to allow for proper document preparation.

Both parties agree to cooperate with each other to accomplish such exchanges, including the execution of all documents necessary to accomplish the exchanges; **PROVIDED THAT** each will bear all costs and expenses incurred by his/her/its own exchange, including attorneys' fees, and each party shall indemnify, defend and hold harmless the other from any costs, liability or expense, including attorneys' fees, which one party may sustain as a result of cooperating with an exchange by the other party. In no event shall a party be required to take title to any other property in cooperation with an exchange.

THIS AGREEMENT IS NOT CONTINGENT UPON THE SELLER OR BUYER PERFORMING A 1031 TAX DEFERRED EXCHANGE.

- 3) **TOTAL PURCHASE PRICE** Three Million, Five hundred thousand & no/100 ——— U.S. Dollars (\$3,500,000.00) payable as follows:
 - A) **Initial Earnest Money**
Seller hereby acknowledges that Buyer has deposited \$75,000.00 (the "Initial Earnest Money") in an Idaho Depository Trust Account held by the Escrow/Closing agent at First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700 (the "Title Company"), and it has been made available to Seller pursuant to that certain

GHT

Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties. The Initial Earnest Money is a non-refundable deposit. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Initial Earnest Money shall be applied to the purchase price at closing.

B) Additional Earnest Money

No later than twenty-four hours following the execution of this Agreement by Seller and Buyer, Buyer shall deposit an additional \$75,000.00 (the "Additional Earnest Money") in escrow with the Title Company. The Additional Earnest Money shall be non-refundable and shall be paid by the Title Company to Seller upon Seller's request. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Additional Earnest Money shall be applied to the purchase price at closing.

C) Final Earnest Money

In accordance with Paragraph 8 of this Agreement, Buyer shall deposit \$150,000.00 (the "Final Earnest Money") in escrow with the Title Company by no later than December 31, 2007. The Final Earnest Money shall be non-refundable and shall be paid by the Title Company to Seller upon Seller's request. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Final Earnest Money shall be applied to the purchase price at closing.

D) Balance of \$3,200,000.00 shall be payable in cash or immediately available funds at time of Closing.

4) PURCHASE SHALL INCLUDE:

A) One hundred percent (100%) of all mineral rights royalties, leases and interests of every kind whatsoever associated with the Purchased Property, owned by Seller as of the date of this Agreement shall be conveyed to Buyer at Closing. This shall include, but not be limited to, hard rock minerals such as gold and silver, as well as oil, gas, hydrocarbons and gravel.

B) All water and water rights, water shares, water certificates, ditches and ditch rights and reservoirs and reservoir rights, including all interests in irrigation, ditch and reservoir companies, whether surface water, stored water or underground waters, owned by Seller or appurtenant to or customarily used on the Purchased Property are to be transferred to Buyer at closing.

C) All rights to State Lease G-5610 and BLM Permit Allotment numbers 00107, 00106, 00298, held by Seller or commonly used with the "Purchased Property", which shall be transferred to Buyer at Closing.

D) The following items, if applicable, are to be left upon the premises as part of the property purchased: All ranch owned appliances, window coverings, propane tanks,

plus corral systems, including cattle squeeze chute, if any, plus all fences, gates, stock watering systems and irrigation systems.

5) **FINAL ACCEPTANCE:**

All Parties acknowledge the term "Final Acceptance", refers to the date on which all parties have actually executed this Agreement. If all parties do not execute the Agreement on the same date, the Final Acceptance date shall be the date on which this Agreement was executed by the last party.

Final Acceptance date may not coincide with reference date on the 1st page of this Agreement.

6) **CLOSING DATE:** The date of Closing shall be September 23rd, 2008.

Buyer and Seller agree that the Closing Agent to this transaction shall be First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700. Buyer and Seller shall equally pay the Title Company Closing fees (50/50).

The Seller shall convey the real property by Warranty Deed, free of all liens and encumbrances except those described in the Title Insurance section of this Agreement.

Seller and Buyer agree to prorate taxes and special improvement assessments for the current tax year, if any, as of the date of Closing, with Seller being responsible for paying any overdue taxes.

Buyer shall pay the costs of document preparation and the recording of Buyer's deed.

Seller shall advise Closing Agent and Buyer's Representative of any assignment of this agreement or any portion thereof prior to Closing, together with correct distribution proceeds, allowing for proper document preparation.

The Closing Agent is authorized to make all other usual and customary Closing prorations and disbursements, as well as Seller's commitment to the commission payment, which shall be paid directly to both the Listing Firm and Buyer's Broker per their agreed Cooperating Broker Agreement.

7) **[Intentionally left blank]**

8) **DUE DILIGENCE, CONTINGENCIES AND REPRESENTATIONS:** The purchase offer made by Buyer and closing of the transaction are subject to each of the following contingencies being satisfied prior to closing.

Seller and Buyer acknowledge that each representation and warranty stated in this Agreement is a material inducement to the other to accept and close the transaction contemplated hereby and each of such representations and warranties shall survive closing.

CJA

Prior to the expiration of the Due Diligence Date, Buyer may, in Buyer's sole discretion and for any reason, determine whether Buyer desires to proceed with the transaction contemplated by this Agreement, as provided in this Section.

Seller and Buyer agree the "Due Diligence Date" shall be December 27, 2007 at 5:00 p.m. MST.

A) **DUE DILIGENCE INSPECTION AND ELECTION:** Prior to the Due Diligence Date, Buyer shall have the opportunity to complete the Due Diligence inspection of the property and to determine, in Buyer's sole discretion, whether Buyer desires to proceed with the transaction contemplated by this Agreement.

- 1) Buyer's payment of the Final Earnest Money and the closing of this Agreement are conditioned upon Buyer's Due Diligence examination of the Property and such materials and information, as Buyer deems relevant to its decision to purchase, and Buyer's election, in its sole discretion, to proceed with the purchase provided for herein. Buyer shall be entitled, at Buyer's sole expense, to conduct any inspections, tests, and studies, and to review any information and documents (including those relating to water rights, mineral rights, mineral leases, grazing leases, other leases, title, Property condition, and environmental condition) for the purpose of satisfying Buyer as to the acceptability and suitability of the Property for Buyer's intended use.
- 2) Seller shall, if applicable, deliver or cause to be delivered to Buyer all of the following documents which are in Seller's possession, custody, or control within 10 days after complete execution of this Agreement.
 - i. All grazing, gravel, oil and gas, fence line agreements, mineral, outfitting, recreation and other leases, rental agreements, easements, permits and contracts relating to or affecting the Property or any portion thereof.
 - ii. Written summaries or descriptions of all material oral agreements, oral commitments, informal arrangements, and other unwritten agreements affecting any portion of the Property or the Seller's ongoing outfitting and recreation business.
 - iii. All records, documents, inventories, reports, maps and other information relating to water rights appurtenant to the Property, including copies of documents related to any litigation affecting water rights appurtenant to the Property.
 - iv. All maps, plats, and surveys relating to or depicting the Property or any portion thereof.

[Handwritten signature]

- v. All documents, records, or other information relating to the existence of hazardous waste or substances, contamination, or other environmental issues on or affecting the Property.
 - vi. Any other documents, records, reports, or information in Seller's possession, which relate to the title to or condition of the Property or Personal Property.
- 3) Buyer and Buyer's agents shall be allowed to access the Property at all reasonable times for the purpose of making inspections and conducting tests and studies. Buyer shall not damage the Property and/or Personal Property or any improvements thereon except as may be reasonably necessary to perform such tests and studies. Buyer shall not permit any construction or materialmen's liens to be filed against the Property as a result of tests and studies. Buyer shall indemnify Seller for any damage (except as reasonably necessary), cost or expense, including reasonable attorneys' fees incurred by Seller, as a result of Buyer's tests and studies.
- 4) Should Buyer disapprove of any conditions related to the Purchased Property, the Personal Property or to any other conditions or matters determined to Buyer in its sole discretion to be detrimental to its desire to acquire the Purchased Property, Buyer may notify Seller in writing of its disapproval and wish to terminate this contract or Buyer may elect to allow Seller an additional 4 days from the Due Diligence Date (the "Due Diligence Resolution Date") to correct such conditions or matters. Seller and Buyer agree the Due Diligence Resolution Date shall be December 31st, 2007. In the event Seller is unable or unwilling to resolve Due Diligence objections to Buyer's satisfaction prior to the Due Diligence Resolution Date, Buyer may terminate this contract. Failure of the Buyer to notify Seller in writing prior to the Due Diligence Date (5:00 p.m. MST on December 27, 2007) shall be deemed an acceptance of the condition and terms as related to the property
- B) **TITLE INSURANCE:** At Seller's expense, Seller shall purchase Title Insurance evidenced by a standard form American Land Title Association Title Insurance Commitment in amount equal to the purchase price, committing to insure merchantable title to the real property in the Buyer's name, free and clear of all liens and encumbrances: except encumbrances herein mentioned, zoning ordinances, building and use restrictions, reservations in federal patents, beneficial utility easements apparent or of record, easements of record and usual printed exceptions, which will be assumed by Buyer at Closing.

Title Company shall provide a Preliminary Title Commitment as well as documents pertaining to exceptions to Title, i.e., plats, covenants, easements, etc. to Buyer within 7 days of the acceptance of this Agreement. This offer is

JLS

contingent upon Buyer's review, approval and acceptance of the Title Commitment within the Due Diligence Period.

Such Commitment and subsequent Title Insurance Policy is to be issued by First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700.

- C) **MINERAL RIGHTS:** Buyer acknowledges there is no warranty or representation given by Seller as to ownership of oil, gas, coal or other minerals (including gravel) underlying the Purchased Property. However, Seller represents that Seller has not mortgaged or conveyed any mineral interests since Seller acquired the Purchased Property, and Seller agrees not to convey, mortgage, lease or otherwise encumber any oil, gas, coal or other minerals (including gravel) underlying the Purchased Property prior to closing.

Buyer at Buyer's expense may order a Mineral Report to evaluate status of the Mineral Rights. This offer is contingent upon Buyer's review and approval of the status of the Mineral Rights within the Due Diligence Period.

- D) **WATER RIGHTS:** Seller shall, if necessary, assist Buyer or Buyer's representatives in acquiring copies of the filed water rights, cases, maps, certificates, permits, agreements and supporting documents to allow for a complete examination of the water rights appurtenant to the Purchased Property.

Buyer's obligation to purchase the Property is contingent upon Buyer's approval of the status of the water rights within the Due Diligence period.

- E) **STATE LEASES AND BLM PERMITS:** Buyer's obligation to purchase the Property is contingent upon Buyer's review and approval of State Lease G-5610 and BLM Permit Allotment numbers 00107, 00106, 00298. Seller agrees to cooperate fully with Buyer in transferring all Leases and Permits currently being held by Seller, which are adjacent to or used in connection with the "Purchased Property", by signing waivers and/or relinquishments and/or transfers to Buyer, although Seller is not guaranteeing the transfer, nor Buyer's qualifications to hold the State Leases or BLM Permits.

If Buyer does not notify Seller in writing of any objections to the State Leases or BLM Permits prior to the expiration of the "Due Diligence Date", they will be deemed acceptable to the Buyer.

- F) **HAZARDOUS SUBSTANCES:** As far as Seller is aware, during the time of Seller's ownership or prior to, no hazardous substances have been released, stored or used on the property other than in the ordinary course of using the property as a domestic household and ranch, pursuant to good practices in Payette and Washington Counties, Idaho; there may have been some weed spraying, fertilizing or household dumps on the property while Seller owned the property.

JH

To the best of Seller's knowledge, no such hazardous substance is presently stored or located on the property in violation of law and there are presently no underground storage tanks on the property in violation of any State or Federal law.

This will not in any way relieve Seller of any responsibility for its actions or practices, which may have been in direct violation of environmental standards. This offer is contingent upon Buyer's review, approval and acceptance of the environmental condition of the property with respect to any hazardous waste or other environmental laws or regulations within the Due Diligence period.

- G) **EASEMENTS:** Buyer's obligation to purchase the Property is contingent upon Buyer's approval of any and all easements or rights of ways across the Purchased Property which may appear of record and any easements or rights of way across the Purchased Property that may be disclosed by Seller and/or Seller's representatives.

Seller represents to the best of its knowledge there are no unrecorded easements or right-of-ways across the Purchased Property.

Seller shall not enter into any easements or access agreements, either verbal or in writing, which might affect the Property from time of Final Acceptance to closing.

If Buyer does not notify Seller in writing, prior to the Due Diligence Date, of any objections to any easements or rights of way across the Purchased Property, the easements or rights of way across the Purchased Property will be deemed acceptable by the Buyer.

- H) **INDEPENDENT INVESTIGATION:** Brokers have made no warranties or representations to Buyer or to Seller, which have been relied upon by the other. Buyer and Seller agree to make their own independent investigation of each other, the property, zoning, water rights, permits and of the transaction – independent of the Brokers. Buyer will be acquiring the "Purchased Property" in "as is" condition. Sellers represent there is a buried gasoline storage tank on the ranch and hearsay that there may been an old Indian burial ground with graves and artifacts that were removed by the State of Idaho.

Buyer acknowledges and accepts that the fence lines may not be located on the actual property lines and that the responsibility and any cost for fencing the subject property shall be Buyer's.

- I) **DUE DILIGENCE ACCESS:** Immediately following the signing of this document by All Parties, in addition to the access granted pursuant to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties, Buyer shall be granted access to the Ranch to perform certain tests and analysis of the Property to

measure whether subject property is suitable for it's needs. Tests shall include, but not be limited to:

- 1) Core drilling
- 2) Soil sampling
- 3) Site assessments by teams of technicians
- 4) Surveying.

Buyer shall be held responsible for the actions of its employees and contractors in this regard, as well as any reclamation necessary to "put back" disturbed areas. Additionally Buyer and its evaluation team and contractors shall use "best efforts" to minimize risk for fire and intrusions upon Seller's hunting and dog training business.

- 9) **SIMULTANEOUS CLOSINGS:** Buyer and Seller agree that the sale of Sellers' Little Willow Kennel Ranch, Little Willow Ranch and Robertsons' personal residence are each contingent upon the Closing of the other respective tracts.
- 10) **POSSESSION:** Buyer and Seller agree that Buyer shall have full possession on Date of Closing but Seller shall have the option to continue to operate the Ranch until January 1st, 2010, at which time Seller agrees to have all personal effects of its own or others removed from the Purchased Property within 30 days of that date. Seller's continued use of the property shall be conditional upon Buyer's ability to access the property for tests, site design and initial project construction. Buyer and Seller agree that, prior to January 1st, 2010, each may be willing to discuss a renewal of the operating agreement, thus extending Sellers' possession as a tenant.

Prior to Closing, Buyer shall provide Seller with a copy of a "Triple Net" Ag Lease/Operating Agreement identifying Sellers obligations and responsibilities there under, while also specifying Buyer's obligations and responsibilities.

- 11) **CLAIMS, ACTIONS & SUITS:** Seller represents there will be no actions, suits, proceedings or claims that remain unresolved affecting the property or any portion thereof or relating to or rising out of the ownership, operation, use or occupancy of the property pending or being prosecuted in any Court or by or before any Federal or State Agency, and that any notice of an action, suit, proceeding or claim received by Seller, which may be threatened or asserted against the Property, will be resolved prior to Closing.
- 12) **INDEMNIFICATION:** Seller agrees to indemnify and hold Buyer harmless from and against any and all claims, causes of action, liability, losses, damages, cost and expenses, including court costs and reasonable attorney's fees, which Buyer may sustain by reason of, or in connection with any known inaccuracy or known misrepresentation in any information furnished by Seller hereunder or by reason of any breach of Seller's representations or warranties contained herein. This obligation of indemnity shall survive the Closing and recording of the Warranty Deed from Seller to the Buyer.

- JWA
- 13) **BUYER'S AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Seller acknowledges Mark Norem, of Mark Norem Real Estate, P.O. Box 1285, Big Timber, Montana 59011 ("Buyer Broker") is an agent of Buyer, Buyer Broker is representing the Buyer with respect to the "Purchased Property" and is primarily obligated to the Buyer, however the Buyer Broker is obligated to Seller as specified below:

1) to disclose to a Seller any "adverse material facts" that concern the ability of the Buyer to perform on any purchase offer and that are known to the Buyer Broker; 2) to deal in good faith with the Seller; and 3) to comply with all applicable federal and state laws, rules, and regulations.

Buyer Broker is obligated to the Buyer as follows:

1) to act solely in the best interests of the Buyer to the exclusion of all other interests, including those of the Buyer Broker; 2) to obey promptly and efficiently all lawful instructions of the Buyer; 3) to disclose to the Buyer all relevant and material information that concerns the real estate transaction and that is known by the Buyer Broker and not known by the Buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship; 4) to safeguard the Buyer's confidences; 5) to exercise reasonable skill, care, and diligence in pursuing the Buyer's objectives; 6) to fully account to the Buyer for all funds or property of the Buyer coming into the Buyer Broker's possession; and 7) to comply with all applicable federal and state laws, rules, and regulations.

- 14) **SELLERS' AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Buyer acknowledges John Knipe, of Knipe Land Company, Inc. P.O. Box 1031, Boise, Idaho 83701, is an agent of the Seller.

Seller's Agent is primarily obligated to the Seller, the Seller's Agent is obligated to a Buyer as specified below:

A Seller's agent is obligated to a Buyer as follows: 1) to disclose to Buyer any adverse material facts that concern the property and that are known to the Seller's Agent; 2) to deal in good faith with the Buyer; and 3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a Broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony

- 15) **BUYER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement but refuse or neglect to consummate the transaction within the time period provided in this Agreement, the Buyer may: 1) demand immediate repayment of all monies that Buyer

has paid as Initial Earnest Money, Additional Earnest Money and Additional Non-Refundable Deposit, and upon the return of such money the rights and duties of Buyer and Seller under this Agreement shall be terminated; and /or 2) demand that Seller specifically perform Seller's obligation under this Agreement; and /or 3) demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

- 16) **SELLER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period in this Agreement, subject to the representations, conditions and contingencies set forth in Section 8, the Seller may: 1) declare the Initial Earnest Money together with the Additional Earnest Money and the Final Earnest Money paid by Buyer be forfeited; or 2) demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement which shall be limited to the total of the Initial Earnest Money together with the Additional Earnest Money and the Final Earnest Money, or 3) demand that Buyer specifically perform Buyer's obligation under this Agreement.
- 17) **BUYER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Buyer represent that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or other entity that he/she is duly authorized to enter into the Agreement on behalf of such entity.
- 18) **SELLER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or the entity that he/she is duly authorized to enter in the Agreement on behalf of such entity.
- 19) **DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS:** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the Buyers with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the Buyers of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.
- A) **Sellers' disclosure:** Sellers have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
- B) **Buyers' acknowledgment:** Buyers have received the pamphlet Protect you Family from Lead in Your Home and waives the opportunity to conduct a risk

assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

- C) **Agent's Acknowledgment:** Agent has informed the Sellers of the Sellers' obligations under 42 U.S.C. 4582(d) and is aware of their responsibility to ensure compliance.
- D) **Certification of Accuracy:** Parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by each is true and accurate.

- 20) **MOLD DISCLOSURE:** All Buyers of Idaho properties acknowledge the following: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller, Seller's Agent or Buyer's Agent cannot and does not represent or warrant the absence of mold. It is the Buyer or Tenant's obligation to determine whether a mold problem is present. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent or lease contingent upon the results of that inspection. A Seller, Seller's Agent or Buyer's Agent who provides this Mold Disclosure Statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent or lease. The undersigned, Seller and/or Seller's Agent disclose that they have knowledge that the building or buildings on the property have mold present in them. This disclosure is made in recognition that all inhabitable properties contain mold, as defined by the Idaho Mold Disclosure Act (any mold, fungus, mildew or spores). The undersigned is not representing that a significant mold problem exists or does not exist on the property, as such a determination may only be made by a qualified inspector.

If Seller knows a building located on the property has been tested for mold, Seller has previously provided or with this Disclosure provides the Buyer a copy of the results of that test (if available) and evidence of any subsequent mitigation or treatment.

The undersigned Buyer, Buyer's Agent or Statutory Broker acknowledges receipt of this Disclosure, the test results (if available) and evidence of subsequent mitigation or treatment. The undersigned Buyer agrees that it is his responsibility to hire a qualified inspector to determine if a significant mold problem exists or does not exist on the

property. Buyer further acknowledges that the Seller, Seller's Agent, Buyer's Agent and/or Statutory Broker, who have provided this Disclosure, are not liable for any action based on the presence of or propensity for mold in the property.

- 21) **RADON DISCLOSURE:** Pursuant to the Idaho Radon Control Act, the Sellers hereby provide to the Buyers the following disclosure: RADON GAS; Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal guidelines have been found in buildings in Idaho, additional information regarding radon and radon testing may be obtained from your county or state public health unit. This property has not been tested for radon and radon mitigation treatment has not been done on this property.
- 22) **MEGAN'S LAW DISCLOSURE:** Certain individuals are required to register their address with the local law enforcement agencies as part of Idaho's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Idaho Department of Justice in Boise, Idaho, and the probation officers assigned to the area.
- 23) **NOXIOUS WEEDS DISCLOSURE:** Buyer of property in the State of Idaho should be aware that this property contains noxious weeds. The laws of the State of Idaho require owners of property within this State to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County Extension Agent or Weed Control Board.
- 24) **CONFIDENTIALITY:** Buyer and Seller shall not disclose any terms or provisions of this Agreement to any other Real Estate Broker, Real Estate Agency Appraiser or to any persons not party to this Agreement, except for those professionals who are designated or approved in writing by both Buyer and Seller. The terms of this paragraph shall survive closing.
- 25) **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement and all clauses herein.
- 26) **ATTORNEYS' FEES:** Buyer and Seller acknowledge the real estate is located in the State of, and therefore, all aspects of the Purchase and Sale Agreement and all aspects or related contracts shall be governed by Idaho law. In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs. Buyer shall pay for preparation of legal documents necessary to close transaction, as well as any due diligence in regards to contingencies. Seller shall pay its own legal costs for review of documents.
- 27) **NOTICE:** Any notice in writing required to be given hereunder shall be completed when deposited in the United States Mail, return receipt requested, postage prepaid and

addressed to the other party at the parties addresses listed in this Agreement unless otherwise notified in writing of a change of address.

28) **COUNTERPARTS:** This Agreement may be executed in counterparts, whether original, facsimile or email copies, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

29) **ACKNOWLEDGEMENT:** By their execution of this document, all Parties to this Agreement acknowledge they have read and fully understand the Terms and Conditions stated herein and, furthermore, acknowledge they have been advised to seek legal advice.

30) **ACCEPTANCE:** Buyer agrees to purchase the above-described property on the terms and conditions set forth in the above offer and grants to Buyer's Broker until Five o'clock (5:00) P.M. MST on Monday, October 22, 2007 to secure Seller's written acceptance.

31) **ENTIRE AGREEMENT:** This Agreement and all exhibits hereto and any other written agreements entered into herewith shall constitute the entire understanding of the Parties as to the subject matter hereof and therefore *shall* fully supersede all prior and written agreements, including, but not limited to that certain Agreement to Sell and Purchase (including *Warrant Money Receipts*) dated September 24, 2007 entered into between the Parties, and any other understandings between the Parties with respect to such matters.

[Signature Page Follows]

STILLER

Reviews:

DATED this 22 day of Dec-2007

DATED ~~06/22~~ day of ~~October~~, 2007

Robertson Kennedy, Inc.

Wild American Nuclear Energy Company

Payette, ID 83661
Phone: 208-642-2994

By: Bill Weinmann, President
666 Grand Avenue
Des Moines, IA 50309
Phone: 515-281-2222

SELLER'S BROKER:
DATED this 22nd day of Oct, 2007

BUYER'S BROKER:
DATED this 22nd day of Oct, 2007

JOHN KNIPE'Sole's Broker
Kubbe Land Company, Inc.
P.O. Box 1031

**MARK NOREM/Buyer's Broker
Real Estate & Livestock Broker
PO Box 1285**

Boise, ID 83701
208-345-3163 (Office)
208-344-0936 (Fax)
208-890-1901 (Mobile)

Big Timber MT 59011
406-932-4606 (Office)
406-932-4605 (Fax)
406-930-4606 (Mobile)

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EXHIBIT 'A'
LITTLE WILLOW KENNEL RANCH
LEGAL DESCRIPTION

PARCEL I

Government Lots 1, 2, 3, and 4; SE $\frac{1}{4}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$; and SW $\frac{1}{4}$ in Section 1, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho;
EXCEPTING THEREFROM the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$.

PARCEL II

NW $\frac{1}{4}$ of Section 2, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho.

PARCEL III

W $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; and NW $\frac{1}{4}$ NW $\frac{1}{4}$ in Section 12, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho;

EXCEPTING THEREFROM the following described parcel:

Beginning at the NW 1/16 corner (Northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$) of said Section 12;
thence Easterly along the North 1/16 line, S 89°05'28" E, 594.00 feet;
thence departing said North 1/16 line, S 00°35'55" W, 167.50 feet to an iron pin being the Point of Beginning;

thence S 89°24'05" E, 208.00 feet to an iron pin;
thence S 00°35'55" W, 208.00 feet to an iron pin;
thence N 89°24'05" W, 208.00 feet to an iron pin;
thence N 00°35'55" E, 208.00 feet to the Point of Beginning.

IN WASHINGTON COUNTY, IDAHO:

IN TOWNSHIP 10 NORTH, RANGE 3 WEST OF THE BOISE MERIDIAN:

Section 28: SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 35: E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{2}$ SW $\frac{1}{4}$.

EXCEPTING THEREFROM all minerals and mineral rights appurtenant to said property; and subject to all existing, reserved and/or granted easements, restrictions and rights of way, as disclosed by Warranty Deed recorded March 18, 1981, Instrument No. 122577, Book 101, Page 2, Official Records.

According to the office of the County Assessor, the address associated with the referenced real estate is:

No address associated with this parcel

JH

AGREEMENT TO SELL AND PURCHASE
(Including Earnest Money Receipt)

| | |
|-----------------------|--------------|
| Exh. No. | 31 |
| Date | 8.25.08 |
| Name | R. Robertson |
| M & M Court Reporting | |

Dated: October 21, 2007

THIS IS A LEGALLY BINDING CONTRACT. SEEK COMPETENT LEGAL ADVICE.

MidAmerican Nuclear Energy Company of 666 Grand Avenue, Des Moines, IA 50309,
(hereinafter called "Buyer") agrees to purchase, and

Johnnie L. and Richard A. Robertson, of 8701 Little Willow Road, Payette, Idaho 83661
(hereinafter called "Seller") agrees to sell the following real estate and improvements, hereinafter
referred to as "**Purchased Property**", in the County of Payette, State of Idaho more particularly
described as the **ROBERTSON PERSONAL RESIDENCE**, see attached Exhibit A, which legal
description shall be confirmed by Title Company.

- 1) **THE TERMS AND CONDITIONS** set forth in this Agreement to Sell and Purchase contain all of the terms and conditions of the offer made by Buyer for the Real Property described in this Agreement.
- 2) **ASSIGNMENT:** Buyer and Seller acknowledge that each party reserves the right to transfer or purchase the property by use of a IRC 1031 Tax Deferred Exchange and each may wish to assign all or a portion of their rights to this Agreement to another entity or person, for this purpose prior to Closing. Each shall be responsible for notifying respective Representatives and the Closing Agent as to how title is to be transferred in sufficient time to allow for proper document preparation.

Both parties agree to cooperate with each other to accomplish such exchanges, including the execution of all documents necessary to accomplish the exchanges; PROVIDED THAT each will bear all costs and expenses incurred by his/her/its own exchange, including attorneys' fees, and each party shall indemnify, defend and hold harmless the other from any costs, liability or expense, including attorneys' fees, which one party may sustain as a result of cooperating with an exchange by the other party. In no event shall a party be required to take title to any other property in cooperation with an exchange.

THIS AGREEMENT IS NOT CONTINGENT UPON THE SELLER OR BUYER PERFORMING A 1031 TAX DEFERRED EXCHANGE.

- 3) **TOTAL PURCHASE PRICE** Five Hundred Thousand & no/100 ----- U.S. Dollars (\$500,000.00) payable as follows:
 - A) **Earnest Money**
\$10.00 Earnest Money shall be a non-refundable money deposit upon receipt by escrow or upon receipt by Seller. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Earnest Money shall be applied to the purchase price at closing.

- CH
- B) Balance of \$499,990.00 shall be payable in cash or immediately available funds at time of Closing.

4) **PURCHASE SHALL INCLUDE:**

- A) One hundred percent (100%) of all mineral rights royalties, leases and interests of every kind whatsoever associated with the Purchased Property, owned by Seller as of the date of this Agreement shall be conveyed to Buyer at Closing. This shall include, but not be limited to, hard rock minerals such as gold and silver, as well as oil, gas, hydrocarbons and gravel.
- B) All water and water rights, water shares, water certificates, ditches and ditch rights and reservoirs and reservoir rights, including all interests in irrigation, ditch and reservoir companies, whether surface water, stored water or underground waters, owned by Seller or appurtenant to or customarily used on the Purchased Property are to be transferred to Buyer at closing.
- C) The following items, if applicable, are to be left upon the premises as part of the property purchased: All ranch owned appliances, window coverings, propane tanks, plus corral systems, including cattle squeeze chute, if any, plus all fences, gates, stock watering systems and irrigation systems.

5) **FINAL ACCEPTANCE:**

All Parties acknowledge the term "Final Acceptance", refers to the date on which all parties have actually executed this Agreement. If all parties do not execute the Agreement on the same date, the Final Acceptance date shall be the date on which this Agreement was executed by the last party.

Final Acceptance date may not coincide with reference date on the 1st page of this Agreement.

6) **CLOSING DATE:** The date of Closing shall be September 23rd, 2008.

Buyer and Seller agree that the Closing Agent to this transaction shall be First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700. Buyer and Seller shall equally pay the Title Company Closing fees (50/50).

The Seller shall convey the real property by Warranty Deed, free of all liens and encumbrances except those described in the Title Insurance section of this Agreement.

Seller and Buyer agree to prorate taxes and special improvement assessments for the current tax year, if any, as of the date of Closing, with Seller being responsible for paying any overdue taxes.

Buyer shall pay the costs of document preparation and the recording of Buyer's deed.

Seller shall advise Closing Agent and Buyer's Representative of any assignment of this agreement or any portion thereof prior to Closing, together with correct distribution proceeds, allowing for proper document preparation.

The Closing Agent is authorized to make all other usual and customary Closing prorations and disbursements, as well as Seller's commitment to the commission payment, which shall be paid directly to both the Listing Firm and Buyer's Broker per their agreed Cooperating Broker Agreement.

7) [Intentionally left blank]

8) **DUE DILIGENCE, CONTINGENCIES AND REPRESENTATIONS:** The purchase offer made by Buyer and closing of the transaction are subject to each of the following contingencies being satisfied prior to closing.

Seller and Buyer acknowledge that each representation and warranty stated in this Agreement is a material inducement to the other to accept and close the transaction contemplated hereby and each of such representations and warranties shall survive closing.

Prior to the expiration of the Due Diligence Date, Buyer may, in Buyer's sole discretion and for any reason, determine whether Buyer desires to proceed with the transaction contemplated by this Agreement, as provided in this Section.

Seller and Buyer agree the "Due Diligence Date" shall be December 27, 2007 at 5:00 p.m. MDT, or such later date as Buyer and Seller agree in writing.

A) **DUE DILIGENCE INSPECTION AND ELECTION:** Prior to the Due Diligence Date, Buyer shall have the opportunity to complete the Due Diligence inspection of the property and to determine, in Buyer's sole discretion, whether Buyer desires to proceed with the transaction contemplated by this Agreement.

- 1) The closing of this Agreement is conditioned upon Buyer's Due Diligence examination of the Property and such materials and information, as Buyer deems relevant to its decision to purchase, and Buyer's election, in its sole discretion, to proceed with the purchase provided for herein. Buyer shall be entitled, at Buyer's sole expense, to conduct any inspections, tests, and studies, and to review any information and documents (including those relating to water rights, mineral rights, mineral leases, grazing leases, other leases, title, Property condition, and environmental condition) for the purpose of satisfying Buyer as to the acceptability and suitability of the Property for Buyer's intended use.
- 2) Seller shall, if applicable, deliver or cause to be delivered to Buyer all of the following documents which are in Seller's possession, custody, or control within 10 days after complete execution of this Agreement.

- JH
- i. All grazing, gravel, oil and gas, fence line agreements, mineral, outfitting, recreation and other leases, rental agreements, easements, permits and contracts relating to or affecting the Property or any portion thereof.
 - ii. Written summaries or descriptions of all material oral agreements, oral commitments, informal arrangements, and other unwritten agreements affecting any portion of the Property or the Seller's ongoing outfitting and recreation business.
 - iii. All records, documents, inventories, reports, maps and other information relating to water rights appurtenant to the Property, including copies of documents related to any litigation affecting water rights appurtenant to the Property.
 - iv. All maps, plats, and surveys relating to or depicting the Property or any portion thereof.
 - v. All documents, records, or other information relating to the existence of hazardous waste or substances, contamination, or other environmental issues on or affecting the Property.
 - vi. Any other documents, records, reports, or information in Seller's possession, which relate to the title to or condition of the Property or Personal Property.
- 3) Buyer and Buyer's agents shall be allowed to access the Property at all reasonable times for the purpose of making inspections and conducting tests and studies. Buyer shall not damage the Property and/or Personal Property or any improvements thereon except as may be reasonably necessary to perform such tests and studies. Buyer shall not permit any construction or materialmen's liens to be filed against the Property as a result of tests and studies. Buyer shall indemnify Seller for any damage (except as reasonably necessary), cost or expense, including reasonable attorneys' fees incurred by Seller, as a result of Buyer's tests and studies.
- 4) Should Buyer disapprove of any conditions related to the Purchased Property, the Personal Property or to any other conditions or matters determined to Buyer in its sole discretion to be detrimental to its desire to acquire the Purchased Property, Buyer may notify Seller in writing of its disapproval and wish to terminate this contract or Buyer may elect to allow Seller an additional 4 days from the Due Diligence Date (the "Due Diligence Resolution Date") to correct such conditions or matters. Seller and Buyer agree the Due Diligence Resolution Date shall be December 31, 2007, or such later date as Buyer and Seller agree in writing. In the event Seller is unable or unwilling to

[Signature]

resolve Due Diligence objections to Buyer's satisfaction prior to the Due Diligence Resolution Date, Buyer may terminate this contract. Failure of the Buyer to notify Seller in writing prior to the Due Diligence Date (5:00 p.m. MDT on December 27, 2007) shall be deemed an acceptance of the condition and terms as related to the property.

- B) TITLE INSURANCE:** At Seller's expense, Seller shall purchase Title Insurance evidenced by a standard form American Land Title Association Title Insurance Commitment in amount equal to the purchase price, committing to insure merchantable title to the real property in the Buyer's name, free and clear of all liens and encumbrances: except encumbrances herein mentioned, zoning ordinances, building and use restrictions, reservations in federal patents, beneficial utility easements apparent or of record, easements of record and usual printed exceptions, which will be assumed by Buyer at Closing.

Title Company shall provide a Preliminary Title Commitment as well as documents pertaining to exceptions to Title, i.e., plats, covenants, easements, etc. to Buyer within 7 days of the acceptance of this Agreement. This offer is contingent upon Buyer's review, approval and acceptance of the Title Commitment within the Due Diligence Period.

Such Commitment and subsequent Title Insurance Policy is to be issued by First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700.

- C) MINERAL RIGHTS:** Buyer acknowledges there is no warranty or representation given by Seller as to ownership of oil, gas, coal or other minerals (including gravel) underlying the Purchased Property. However, Seller represents that Seller has not mortgaged or conveyed any mineral interests since Seller acquired the Purchased Property, and Seller agrees not to convey, mortgage, lease or otherwise encumber any oil, gas, coal or other minerals (including gravel) underlying the Purchased Property prior to closing.

Buyer at Buyer's expense may order a Mineral Report to evaluate status of the Mineral Rights. This offer is contingent upon Buyer's review and approval of the status of the Mineral Rights within the Due Diligence Period.

- D) WATER RIGHTS:** Seller shall, if necessary, assist Buyer or Buyer's representatives in acquiring copies of the filed water rights, cases, maps, certificates, permits, agreements and supporting documents to allow for a complete examination of the water rights appurtenant to the Purchased Property.

Buyer's obligation to purchase the Property is contingent upon Buyer's approval of the status of the water rights within the Due Diligence period.

- E) HAZARDOUS SUBSTANCES:** As far as Seller is aware, during the time of Seller's ownership or prior to, no hazardous substances have been released, stored or used on

the property other than in the ordinary course of using the property as a domestic household and ranch, pursuant to good practices in Payette and Washington Counties, Idaho; there may have been some weed spraying, fertilizing or household dumps on the property while Seller owned the property. To the best of Seller's knowledge, no such hazardous substance is presently stored or located on the property in violation of law and there are presently no underground storage tanks on the property in violation of any State or Federal law.

This will not in any way relieve Seller of any responsibility for its actions or practices, which may have been in direct violation of environmental standards. This offer is contingent upon Buyer's review, approval and acceptance of the environmental condition of the property with respect to any hazardous waste or other environmental laws or regulations within the Due Diligence period.

- F) **EASEMENTS:** Buyer's obligation to purchase the Property is contingent upon Buyer's approval of any and all easements or rights of ways across the Purchased Property which may appear of record and any easements or rights of way across the Purchased Property that may be disclosed by Seller and/or Seller's representatives.

Seller represents to the best of its knowledge there are no unrecorded easements or right-of-ways across the Purchased Property.

Seller shall not enter into any easements or access agreements, either verbal or in writing, which might affect the Property from time of Final Acceptance to closing.

If Buyer does not notify Seller in writing, prior to the Due Diligence Date, of any objections to any easements or rights of way across the Purchased Property, the easements or rights of way across the Purchased Property will be deemed acceptable by the Buyer.

- G) **INDEPENDENT INVESTIGATION:** Brokers have made no warranties or representations to Buyer or to Seller, which have been relied upon by the other. Buyer and Seller agree to make their own independent investigation of each other, the property, zoning, water rights, permits and of the transaction – independent of the Brokers. Buyer will be acquiring the "Purchased Property" in "as is" condition. Sellers represent there is a buried gasoline storage tank on the ranch and hearsay that there may been an old Indian burial ground with graves and artifacts that were removed by the State of Idaho.

Buyer acknowledges and accepts that the fence lines may not be located on the actual property lines and that the responsibility and any cost for fencing the subject property shall be Buyer's.

- H) **DUE DILIGENCE ACCESS:** Immediately following the signing of this document by All Parties, in addition to the access granted pursuant to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007

entered into between the Parties, Buyer shall be granted access to the Ranch to perform certain tests and analysis of the Property to measure whether subject property is suitable for it's needs. Tests shall include, but not be limited to:

- 1) Core drilling
- 2) Soil sampling
- 3) Site assessments by teams of technicians
- 4) Surveying.

Buyer shall be held responsible for the actions of its employees and contractors in this regard, as well as any reclamation necessary to "put back" disturbed areas.

Additionally Buyer and its evaluation team and contractors shall use "best efforts" to minimize risk for fire and intrusions upon Seller's hunting and dog training business.

- 9) **SIMULTANEOUS CLOSINGS:** Buyer and Seller agree that the sale of Sellers' Little Willow Kennel Ranch, Little Willow Ranch and Robertsons' personal residence are each contingent upon the Closing of the other respective tracts.
- 10) **POSSESSION:** Buyer and Seller agree that Buyer shall have full possession on Date of Closing but Seller shall have the option to continue to operate Ranch until January 1st, 2010, at which time Seller agrees to have all personal effects of its own or others removed from the Purchased Property within 30 days of that date. Seller's continued use of the property shall be conditional upon Buyer's ability to access the property for tests, site design and initial project construction. Buyer and Seller agree that, prior to January 1st, 2010, they may be willing to discuss a renewal of the operating agreement, thus extending Sellers' possession as a tenant.

Prior to Closing, Buyer shall provide Seller with a copy of a "Triple Net" Ag Lease/Operating Agreement identifying Sellers obligations and responsibilities there under, while also specifying Buyer's obligations and responsibilities.

- 11) **CLAIMS, ACTIONS & SUITS:** Seller represents there will be no actions, suits, proceedings or claims that remain unresolved affecting the property or any portion thereof or relating to or rising out of the ownership, operation, use or occupancy of the property pending or being prosecuted in any Court or by or before any Federal or State Agency, and that any notice of an action, suit, proceeding or claim received by Seller, which may be threatened or asserted against the Property, will be resolved prior to Closing.
- 12) **INDEMNIFICATION:** Seller agrees to indemnify and hold Buyer harmless from and against any and all claims, causes of action, liability, losses, damages, cost and expenses, including court costs and reasonable attorney's fees, which Buyer may sustain by reason of, or in connection with any known inaccuracy or known misrepresentation in any information furnished by Seller hereunder or by reason of any breach of Seller's representations or warranties contained herein. This obligation of indemnity shall survive the Closing and recording of the Warranty Deed from Seller to the Buyer.
- 13) **BUYER'S AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Seller acknowledges Mark Norem, of Mark Norem Real Estate, P.O. Box 1285, Big

Timber, Montana 59011 ("Buyer Broker") is an agent of Buyer, Buyer Broker is representing the Buyer with respect to the "Purchased Property" and is primarily obligated to the Buyer, however the Buyer Broker is obligated to Seller as specified below:

1) to disclose to a Seller any "adverse material facts" that concern the ability of the Buyer to perform on any purchase offer and that are known to the Buyer Broker; 2) to deal in good faith with the Seller; and 3) to comply with all applicable federal and state laws, rules, and regulations.

Buyer Broker is obligated to the Buyer as follows:

1) to act solely in the best interests of the Buyer to the exclusion of all other interests, including those of the Buyer Broker; 2) to obey promptly and efficiently all lawful instructions of the Buyer; 3) to disclose to the Buyer all relevant and material information that concerns the real estate transaction and that is known by the Buyer Broker and not known by the Buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship; 4) to safeguard the Buyer's confidences; 5) to exercise reasonable skill, care, and diligence in pursuing the Buyer's objectives; 6) to fully account to the Buyer for all funds or property of the Buyer coming into the Buyer Broker's possession; and 7) to comply with all applicable federal and state laws, rules, and regulations.

- 14) **SELLERS' AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Buyer acknowledges John Knipe, of Knipe Land Company, Inc. P.O. Box 1031, Boise, Idaho 83701, is an agent of the Seller.

Seller's Agent is primarily obligated to the Seller, the Seller's Agent is obligated to a Buyer as specified below:

A Seller's agent is obligated to a Buyer as follows: 1) to disclose to Buyer any adverse material facts that concern the property and that are known to the Seller's Agent; 2) to deal in good faith with the Buyer; and 3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a Broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony

- 15) **BUYER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement but refuse or neglect to consummate the transaction within the time period provided in this Agreement, the Buyer may: 1) demand immediate repayment of all monies that Buyer has paid as Initial Earnest Money, Additional Earnest Money and Additional Non-Refundable Deposit, and upon the return of such money the rights and duties of Buyer and Seller under this Agreement shall be terminated; and /or 2) demand that Seller specifically perform Seller's

obligation under this Agreement; and /or 3) demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

- 16) **SELLER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period in this Agreement, subject to the representations, conditions and contingencies set forth in Section 8, the Seller may: 1) declare the Earnest Money paid by Buyer be forfeited; or 2) demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement which shall be limited to the Earnest Money deposit, or 3) demand that Buyer specifically perform Buyer's obligation under this Agreement.
- 17) **BUYER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Buyer represent that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or other entity that he/she is duly authorized to enter into the Agreement on behalf of such entity.
- 18) **SELLER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or the entity that he/she is duly authorized to enter in the Agreement on behalf of such entity.
- 19) **DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS:** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the Buyers with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the Buyers of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.
- A) **Sellers' disclosure:** Sellers have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
- B) **Buyers' acknowledgment:** Buyers have received the pamphlet Protect you Family from Lead in Your Home and waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.
- C) **Agent's Acknowledgment:** Agent has informed the Sellers of the Sellers' obligations under 42 U.S.C. 4582(d) and is aware of their responsibility to ensure compliance.

- JLS
- D) **Certification of Accuracy:** Parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by each is true and accurate.

- 20) **MOLD DISCLOSURE:** All Buyers of Idaho properties acknowledge the following: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller, Seller's Agent or Buyer's Agent cannot and does not represent or warrant the absence of mold. It is the Buyer or Tenant's obligation to determine whether a mold problem is present. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent or lease contingent upon the results of that inspection. A Seller, Seller's Agent or Buyer's Agent who provides this Mold Disclosure Statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent or lease. The undersigned, Seller and/or Seller's Agent disclose that they have knowledge that the building or buildings on the property have mold present in them. This disclosure is made in recognition that all inhabitable properties contain mold, as defined by the Idaho Mold Disclosure Act (any mold, fungus, mildew or spores). The undersigned is not representing that a significant mold problem exists or does not exist on the property, as such a determination may only be made by a qualified inspector.

If Seller knows a building located on the property has been tested for mold, Seller has previously provided or with this Disclosure provides the Buyer a copy of the results of that test (if available) and evidence of any subsequent mitigation or treatment.

The undersigned Buyer, Buyer's Agent or Statutory Broker acknowledges receipt of this Disclosure, the test results (if available) and evidence of subsequent mitigation or treatment. The undersigned Buyer agrees that it is his responsibility to hire a qualified inspector to determine if a significant mold problem exists or does not exist on the property. Buyer further acknowledges that the Seller, Seller's Agent, Buyer's Agent and/or Statutory Broker, who have provided this Disclosure, are not liable for any action based on the presence of or propensity for mold in the property.

- 21) **RADON DISCLOSURE:** Pursuant to the Idaho Radon Control Act, the Sellers hereby provide to the Buyers the following disclosure: RADON GAS; Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities,

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may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal guidelines have been found in buildings in Idaho, additional information regarding radon and radon testing may be obtained from your county or state public health unit. This property has not been tested for radon and radon mitigation treatment has not been done on this property.

- 22) **MEGAN'S LAW DISCLOSURE:** Certain individuals are required to register their address with the local law enforcement agencies as part of Idaho's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Idaho Department of Justice in Boise, Idaho, and the probation officers assigned to the area.
- 23) **NOXIOUS WEEDS DISCLOSURE:** Buyer of property in the State of Idaho should be aware that this property contains noxious weeds. The laws of the State of Idaho require owners of property within this State to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County Extension Agent or Weed Control Board.
- 25) **CONFIDENTIALITY:** Buyer and Seller shall not disclose any terms or provisions of this Agreement to any other Real Estate Broker, Real Estate Agency Appraiser or to any persons not party to this Agreement, except for those professionals who are designated or approved in writing by both Buyer and Seller. The terms of this paragraph shall survive closing.
- 26) **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement and all clauses herein.
- 27) **ATTORNEYS' FEES:** Buyer and Seller acknowledge the real estate is located in the State of Idaho, therefore, all aspects of the Purchase and Sale Agreement and all aspects or related contracts shall be governed by Idaho law. In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees and costs. Buyer shall pay for preparation of legal documents necessary to close transaction, as well as any due diligence in regards to contingencies. Seller shall pay its own legal costs for review of documents.
- 28) **NOTICE:** Any notice in writing required to be given hereunder shall be completed when deposited in the United States Mail, return receipt requested, postage prepaid and addressed to the other party at the parties addresses listed in this Agreement unless otherwise notified in writing of a change of address.
- 29) **COUNTERPARTS:** This Agreement may be executed in counterparts, whether original, facsimile or email copies, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

- 30) **ACKNOWLEDGEMENT:** By their execution of this document, all Parties to this Agreement acknowledge they have read and fully understand the Terms and Conditions stated herein and, furthermore, acknowledge they have been advised to seek legal advice.
- 31) **ACCEPTANCE:** Buyer agrees to purchase the above-described property on the terms and conditions set forth in the above offer and grants to Buyer's Broker until Five o'clock (5:00) P.M. MST on Monday, October 22, 2007 to secure Seller's written acceptance.
- 31) **ENTIRE AGREEMENT:** This Agreement and all exhibits hereto and any other written agreements entered into herewith shall constitute the entire understanding of the Parties as to the subject matter hereof and thereof and fully supersede all prior and written agreements, including, but not limited to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties, and any other understandings between the Parties with respect to such matter.

[Signature Page Follows]

SELLER:

DATED this 22 day of Oct, 2007

Johnnie L. & Richard A. Robertson

Johnnie L. Robertson

Richard A. Robertson
8701 Little Willow Road
Payette, ID 83661
Phone: 208-642-9728

BUYER:

DATED this 22 day of October, 2007

MidAmerican Nuclear Energy Company

By: Bill Pearson, President
666 Grand Avenue
Des Moines, IA 50309
Phone: 515-281-2326

SELLER'S BROKER:

DATED this 22 day of Oct, 2007

JOHN KNIFE/Seller's Broker

BUYER'S BROKER:

DATED this 22 day of Oct, 2007

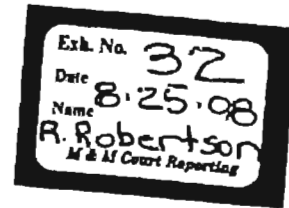
MARK NOREM/Buyer's Broker

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EXHIBIT 'A'
ROBERTSON PERSONAL RESIDENCE
LEGAL DESCRIPTION

All that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 12, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho, described as follows:
Commencing at the Southeast corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 12;
thence West along the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 769 feet to the True Point of Beginning;
thence North a distance of 416 feet;
thence West a distance of 416 feet;
thence South a distance of 416 feet to a point on the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$;
thence East along the South line to the True Point of Beginning.

AGREEMENT TO SELL AND PURCHASE
(Including Earnest Money Receipt)



Dated: October 21, 2007

THIS IS A LEGALLY BINDING CONTRACT. SEEK COMPETENT LEGAL ADVICE.

MidAmerican Nuclear Energy Company of 666 Grand Avenue, Des Moines, IA 50309, (hereinafter called "Buyer") agrees to purchase, and

Johnnie L. and Richard A. Robertson, of 8701 Little Willow Road, Payette, Idaho 83661 (hereinafter called "Seller") agrees to sell the following real estate and improvements, hereinafter referred to as "**Purchased Property**", in the County of Payette, State of Idaho more particularly described as the **LITTLE WILLOW RANCH**, see attached Exhibit A, which legal description shall be confirmed by Title Company.

- 1) **THE TERMS AND CONDITIONS** set forth in this Agreement to Sell and Purchase contain all of the terms and conditions of the offer made by Buyer for the Real Property described in this Agreement.
- 2) **ASSIGNMENT:** Buyer and Seller acknowledge that each party reserves the right to transfer or purchase the property by use of a IRC 1031 Tax Deferred Exchange and each may wish to assign all or a portion of their rights to this Agreement to another entity or person, for this purpose prior to Closing. Each shall be responsible for notifying respective Representatives and the Closing Agent as to how title is to be transferred in sufficient time to allow for proper document preparation.

Both parties agree to cooperate with each other to accomplish such exchanges, including the execution of all documents necessary to accomplish the exchanges; **PROVIDED THAT** each will bear all costs and expenses incurred by his/her/its own exchange, including attorneys' fees, and each party shall indemnify, defend and hold harmless the other from any costs, liability or expense, including attorneys' fees, which one party may sustain as a result of cooperating with an exchange by the other party. In no event shall a party be required to take title to any other property in cooperation with an exchange.

THIS AGREEMENT IS NOT CONTINGENT UPON THE SELLER OR BUYER PERFORMING A 1031 TAX DEFERRED EXCHANGE.

- 3) **TOTAL PURCHASE PRICE** Two Million & no/100 ----- U.S. Dollars (\$2,000,000.00) payable as follows:
 - A) **Initial Earnest Money**
Seller hereby acknowledges that Buyer has deposited **\$75,000.00** (the "Initial Earnest Money") in an Idaho Depository Trust Account held by the Escrow/Closing agent at First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700 (the "Title Company"), and it has been made available to Seller pursuant to that certain

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Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties. The Initial Earnest Money is a non-refundable deposit. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Initial Earnest Money shall be applied to the purchase price at closing.

B) Additional Earnest Money

No later than twenty-four hours following the execution of this Agreement by Seller and Buyer, Buyer shall deposit an additional \$75,000.00 (the "Additional Earnest Money") in escrow with the Title Company. The Additional Earnest Money shall be non-refundable and shall be paid by the Title Company to Seller upon Seller's request. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Additional Earnest Money shall be applied to the purchase price at closing.

C) Final Earnest Money.

In accordance with Paragraph 8 of this Agreement, Buyer shall deposit \$150,000.00 (the "Final Earnest Money") in escrow with the Title Company by no later than December 31, 2007. The Final Earnest Money shall be non-refundable and shall be paid by the Title Company to Seller upon Seller's request. If the transaction contemplated herein is consummated in accordance with the terms of this Agreement, the Final Earnest Money shall be applied to the purchase price at closing.

D) Balance of \$1,700,000.00 shall be payable in cash or immediately available funds at time of Closing.

4) PURCHASE SHALL INCLUDE:

A) One hundred percent (100%) of all mineral rights royalties, leases and interests of every kind whatsoever associated with the Purchased Property, owned by Seller as of the date of this Agreement shall be conveyed to Buyer at Closing. This shall include, but not be limited to, hard rock minerals such as gold and silver, as well as oil, gas, hydrocarbons and gravel.

B) All water and water rights, water shares, water certificates, ditches and ditch rights and reservoirs and reservoir rights, including all interests in irrigation, ditch and reservoir companies, whether surface water, stored water or underground waters, owned by Seller or appurtenant to or customarily used on the Purchased Property are to be transferred to Buyer at closing.

C) All rights to State Lease G-5610 and BLM Permit Allotment numbers 00107, 00106, 00298, held by Seller or commonly used with the "Purchased Property", which shall be transferred to Buyer at Closing.

D) The following items, if applicable, are to be left upon the premises as part of the property purchased: All ranch owned appliances, window coverings, propane tanks,

plus corral systems, including cattle squeeze chute, if any, plus all fences, gates, stock watering systems and irrigation systems.

5) **FINAL ACCEPTANCE:**

All Parties acknowledge the term "Final Acceptance", refers to the date on which all parties have actually executed this Agreement. If all parties do not execute the Agreement on the same date, the Final Acceptance date shall be the date on which this Agreement was executed by the last party.

Final Acceptance date may not coincide with reference date on the 1st page of this Agreement.

6) **CLOSING DATE:** The date of Closing shall be **September 23rd, 2008.**

Buyer and Seller agree that the Closing Agent to this transaction shall be First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700. Buyer and Seller shall equally pay the Title Company Closing fees (50/50).

The Seller shall convey the real property by Warranty Deed, free of all liens and encumbrances except those described in the Title Insurance section of this Agreement.

Seller and Buyer agree to prorate taxes and special improvement assessments for the current tax year, if any, as of the date of Closing, with Seller being responsible for paying any overdue taxes.

Buyer shall pay the costs of document preparation and the recording of Buyer's deed.

Seller shall advise Closing Agent and Buyer's Representative of any assignment of this agreement or any portion thereof prior to Closing, together with correct distribution proceeds, allowing for proper document preparation.

The Closing Agent is authorized to make all other usual and customary Closing proration and disbursements, as well as Seller's commitment to the commission payment, which shall be paid directly to both the Listing Firm and Buyer's Broker per their agreed Cooperating Broker Agreement.

7) **[Intentionally left blank]**

8) **DUE DILIGENCE, CONTINGENCIES AND REPRESENTATIONS:** The purchase offer made by Buyer and closing of the transaction are subject to each of the following contingencies being satisfied prior to closing.

Seller and Buyer acknowledge that each representation and warranty stated in this Agreement is a material inducement to the other to accept and close the transaction contemplated hereby and each of such representations and warranties shall survive closing.

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Prior to the expiration of the Due Diligence Date, Buyer may, in Buyer's sole discretion and for any reason, determine whether Buyer desires to proceed with the transaction contemplated by this Agreement, as provided in this Section.

Seller and Buyer agree the "Due Diligence Date" shall be December 27, 2007 at 5:00 p.m. MST.

A) **DUE DILIGENCE INSPECTION AND ELECTION:** Prior to the Due Diligence Date, Buyer shall have the opportunity to complete the Due Diligence inspection of the property and to determine, in Buyer's sole discretion, whether Buyer desires to proceed with the transaction contemplated by this Agreement.

- 1) Buyer's payment of the Final Earnest Money and the closing of this Agreement are conditioned upon Buyer's Due Diligence examination of the Property and such materials and information, as Buyer deems relevant to its decision to purchase, and Buyer's election, in its sole discretion, to proceed with the purchase provided for herein. Buyer shall be entitled, at Buyer's sole expense, to conduct any inspections, tests, and studies, and to review any information and documents (including those relating to water rights, mineral rights, mineral leases, grazing leases, other leases, title, Property condition, and environmental condition) for the purpose of satisfying Buyer as to the acceptability and suitability of the Property for Buyer's intended use.
- 2) Seller shall, if applicable, deliver or cause to be delivered to Buyer all of the following documents which are in Seller's possession, custody, or control within 10 days after complete execution of this Agreement.
 - i. All grazing, gravel, oil and gas, fence line agreements, mineral, outfitting, recreation and other leases, rental agreements, easements, permits and contracts relating to or affecting the Property or any portion thereof.
 - ii. Written summaries or descriptions of all material oral agreements, oral commitments, informal arrangements, and other unwritten agreements affecting any portion of the Property or the Seller's ongoing outfitting and recreation business.
 - iii. All records, documents, inventories, reports, maps and other information relating to water rights appurtenant to the Property, including copies of documents related to any litigation affecting water rights appurtenant to the Property.
 - iv. All maps, plats, and surveys relating to or depicting the Property or any portion thereof.

- v. All documents, records, or other information relating to the existence of hazardous waste or substances, contamination, or other environmental issues on or affecting the Property.
- vi. Any other documents, records, reports, or information in Seller's possession, which relate to the title to or condition of the Property or Personal Property.
- 3) Buyer and Buyer's agents shall be allowed to access the Property at all reasonable times for the purpose of making inspections and conducting tests and studies. Buyer shall not damage the Property and/or Personal Property or any improvements thereon except as may be reasonably necessary to perform such tests and studies. Buyer shall not permit any construction or materialmen's liens to be filed against the Property as a result of tests and studies. Buyer shall indemnify Seller for any damage (except as reasonably necessary), cost or expense, including reasonable attorneys' fees incurred by Seller, as a result of Buyer's tests and studies.
- 4) Should Buyer disapprove of any conditions related to the Purchased Property, the Personal Property or to any other conditions or matters determined to Buyer in its sole discretion to be detrimental to its desire to acquire the Purchased Property, Buyer may notify Seller in writing of its disapproval and wish to terminate this contract or Buyer may elect to allow Seller an additional 4 days from the Due Diligence Date (the "Due Diligence Resolution Date") to correct such conditions or matters. Seller and Buyer agree the Due Diligence Resolution Date shall be December 31st, 2007. In the event Seller is unable or unwilling to resolve Due Diligence objections to Buyer's satisfaction prior to the Due Diligence Resolution Date, Buyer may terminate this contract. Failure of the Buyer to notify Seller in writing prior to the Due Diligence Date (5:00 p.m. MST on December 27, 2007) shall be deemed an acceptance of the condition and terms as related to the property.
- B) TITLE INSURANCE:** At Seller's expense, Seller shall purchase Title Insurance evidenced by a standard form American Land Title Association Title Insurance Commitment in amount equal to the purchase price, committing to insure merchantable title to the real property in the Buyer's name, free and clear of all liens and encumbrances: except encumbrances herein mentioned, zoning ordinances, building and use restrictions, reservations in federal patents, beneficial utility easements apparent or of record, easements of record and usual printed exceptions, which will be assumed by Buyer at Closing.

Title Company shall provide a Preliminary Title Commitment as well as documents pertaining to exceptions to Title, i.e., plats, covenants, easements, etc. to Buyer within 7 days of the acceptance of this Agreement. This offer is

contingent upon Buyer's review, approval and acceptance of the Title Commitment within the Due Diligence Period.

Such Commitment and subsequent Title Insurance Policy is to be issued by First American Title Company of Idaho, 9465 W. Emerald, Suite 260, Boise, ID 83704, Phone 208-375-0700.

- C) **MINERAL RIGHTS:** Buyer acknowledges there is no warranty or representation given by Seller as to ownership of oil, gas, coal or other minerals (including gravel) underlying the Purchased Property. However, Seller represents that Seller has not mortgaged or conveyed any mineral interests since Seller acquired the Purchased Property, and Seller agrees not to convey, mortgage, lease or otherwise encumber any oil, gas, coal or other minerals (including gravel) underlying the Purchased Property prior to closing.

Buyer at Buyer's expense may order a Mineral Report to evaluate status of the Mineral Rights. This offer is contingent upon Buyer's review and approval of the status of the Mineral Rights within the Due Diligence Period.

- D) **WATER RIGHTS:** Seller shall, if necessary, assist Buyer or Buyer's representatives in acquiring copies of the filed water rights, cases, maps, certificates, permits, agreements and supporting documents to allow for a complete examination of the water rights appurtenant to the Purchased Property.

Buyer's obligation to purchase the Property is contingent upon Buyer's approval of the status of the water rights within the Due Diligence period.

- E) **STATE LEASES AND BLM PERMITS:** Buyer's obligation to purchase the Property is contingent upon Buyer's review and approval of State Lease G-5610 and BLM Permit Allotment numbers 00107, 00106, 00298. Seller agrees to cooperate fully with Buyer in transferring all Leases and Permits currently being held by Seller, which are adjacent to or used in connection with the "Purchased Property", by signing waivers and/or relinquishments and/or transfers to Buyer, although Seller is not guaranteeing the transfer, nor Buyer's qualifications to hold the State Leases or BLM Permits.

If Buyer does not notify Seller in writing of any objections to the State Leases or BLM Permits prior to the expiration of the "Due Diligence Date", they will be deemed acceptable to the Buyer.

- F) **HAZARDOUS SUBSTANCES:** As far as Seller is aware, during the time of Seller's ownership or prior to, no hazardous substances have been released, stored or used on the property other than in the ordinary course of using the property as a domestic household and ranch, pursuant to good practices in Payette and Washington Counties, Idaho; there may have been some weed spraying, fertilizing or household dumps on the property while Seller owned the property. To the best of Seller's knowledge, no such hazardous substance is presently

stored or located on the property in violation of law and there are presently no underground storage tanks on the property in violation of any State or Federal law.

This will not in any way relieve Seller of any responsibility for its actions or practices, which may have been in direct violation of environmental standards. This offer is contingent upon Buyer's review, approval and acceptance of the environmental condition of the property with respect to any hazardous waste or other environmental laws or regulations within the Due Diligence period.

- G) **EASEMENTS:** Buyer's obligation to purchase the Property is contingent upon Buyer's approval of any and all easements or rights of ways across the Purchased Property which may appear of record and any easements or rights of way across the Purchased Property that may be disclosed by Seller and/or Seller's representatives.

Seller represents to the best of its knowledge there are no unrecorded easements or right-of-ways across the Purchased Property.

Seller shall not enter into any easements or access agreements, either verbal or in writing, which might affect the Property from time of Final Acceptance to closing.

If Buyer does not notify Seller in writing, prior to the Due Diligence Date, of any objections to any easements or rights of way across the Purchased Property, the easements or rights of way across the Purchased Property will be deemed acceptable by the Buyer.

- H) **INDEPENDENT INVESTIGATION:** Brokers have made no warranties or representations to Buyer or to Seller, which have been relied upon by the other. Buyer and Seller agree to make their own independent investigation of each other, the property, zoning, water rights, permits and of the transaction – independent of the Brokers. Buyer will be acquiring the "Purchased Property" in "as is" condition. Seller represents there is a buried gasoline storage tank on the ranch and hearsay that there may been an old Indian burial ground with graves and artifacts that were removed by the State of Idaho.

Buyer acknowledges and accepts that the fence lines may not be located on the actual property lines and that the responsibility and any cost for fencing the subject property shall be Buyer's.

- I) **DUE DILIGENCE ACCESS:** Immediately following the signing of this document by All Parties, in addition to the access granted pursuant to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties, Buyer shall be granted access to the Ranch to perform certain tests and analysis of the Property to

measure whether subject property is suitable for it's needs. Tests shall include, but not be limited to:

- 1) Core drilling
- 2) Soil sampling
- 3) Site assessments by teams of technicians
- 4) Surveying.

Buyer shall be held responsible for the actions of its employees and contractors in this regard, as well as any reclamation necessary to "put back" disturbed areas. Additionally Buyer and its evaluation team and contractors shall use "best efforts" to minimize risk for fire and intrusions upon Seller's hunting and dog training business.

- 9) **SIMULTANEOUS CLOSINGS:** Buyer and Seller agree that the sale of Sellers' Little Willow Kennel Ranch, Little Willow Ranch and Robertsons' personal residence are each contingent upon the Closing of the other respective tracts.
- 10) **POSSESSION:** Buyer and Seller agree that Buyer shall have full possession on Date of Closing but Seller shall have the option to continue to operate Ranch until January 1st, 2010, at which time Seller agrees to have all personal effects of its own or others removed from the Purchased Property within 30 days of that date. Seller's continued use of the property shall be conditional upon Buyer's ability to access the property for tests, site design and initial project construction. Buyer and Seller agree that, prior to January 1st, 2010, they may be willing to discuss a renewal of the operating agreement, thus extending Sellers' possession as a tenant.

Prior to Closing, Buyer shall provide Seller with a copy of a "Triple Net" Ag Lease/Operating Agreement identifying Sellers obligations and responsibilities there under, while also specifying Buyer's obligations and responsibilities.
- 11) **CLAIMS, ACTIONS & SUITS:** Seller represents there will be no actions, suits, proceedings or claims that remain unresolved affecting the property or any portion thereof or relating to or rising out of the ownership, operation, use or occupancy of the property pending or being prosecuted in any Court or by or before any Federal or State Agency, and that any notice of an action, suit, proceeding or claim received by Seller, which may be threatened or asserted against the Property, will be resolved prior to Closing.
- 12) **INDEMNIFICATION:** Seller agrees to indemnify and hold Buyer harmless from and against any and all claims, causes of action, liability, losses, damages, cost and expenses, including court costs and reasonable attorney's fees, which Buyer may sustain by reason of, or in connection with any known inaccuracy or known misrepresentation in any information furnished by Seller hereunder or by reason of any breach of Seller's representations or warranties contained herein. This obligation of indemnity shall survive the Closing and recording of the Warranty Deed from Seller to the Buyer.
- 13) **BUYER'S AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Seller acknowledges Mark Norem, of Mark Norem Real Estate, P.O. Box 1285,

Big Timber, Montana 59011 ("Buyer Broker") is an agent of Buyer, Buyer Broker is representing the Buyer with respect to the "Purchased Property" and is primarily obligated to the Buyer, however the Buyer Broker is obligated to Seller as specified below:

1) to disclose to a Seller any "adverse material facts" that concern the ability of the Buyer to perform on any purchase offer and that are known to the Buyer Broker; 2) to deal in good faith with the Seller; and 3) to comply with all applicable federal and state laws, rules, and regulations.

Buyer Broker is obligated to the Buyer as follows:

1) to act solely in the best interests of the Buyer to the exclusion of all other interests, including those of the Buyer Broker; 2) to obey promptly and efficiently all lawful instructions of the Buyer; 3) to disclose to the Buyer all relevant and material information that concerns the real estate transaction and that is known by the Buyer Broker and not known by the Buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship; 4) to safeguard the Buyer's confidences; 5) to exercise reasonable skill, care, and diligence in pursuing the Buyer's objectives; 6) to fully account to the Buyer for all funds or property of the Buyer coming into the Buyer Broker's possession; and 7) to comply with all applicable federal and state laws, rules, and regulations.

- 14) **SELLERS' AGENT DISCLOSURES:** Pursuant to the rules and regulations of the State of Idaho, Buyer acknowledges John Knipe, of Knipe Land Company, Inc. P.O. Box 1031, Boise, Idaho 83701, is an agent of the Seller.

Seller's Agent is primarily obligated to the Seller, the Seller's Agent is obligated to a Buyer as specified below:

A Seller's agent is obligated to a Buyer as follows: 1) to disclose to Buyer any adverse material facts that concern the property and that are known to the Seller's Agent; 2) to deal in good faith with the Buyer; and 3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a Broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony

- 15) **BUYER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement but refuse or neglect to consummate the transaction within the time period provided in this Agreement, the Buyer may: 1) demand immediate repayment of all monies that Buyer has paid as Initial Earnest Money, Additional Earnest Money and Additional Non-Refundable Deposit, and upon the return of such money the rights and duties of Buyer

LH

and Seller under this Agreement shall be terminated; and /or 2) demand that Seller specifically perform Seller's obligation under this Agreement; and /or 3) demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

- 16) **SELLER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period in this Agreement, subject to the representations, conditions and contingencies set forth in Section 8, the Seller may: 1) declare the Initial Earnest Money together with the Additional Earnest Money and the Final Earnest Money paid by Buyer be forfeited; or 2) demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement which shall be limited to the total of the Initial Earnest Money together with the Additional Earnest Money and the Final Earnest Money, or 3) demand that Buyer specifically perform Buyer's obligation under this Agreement.
- 17) **BUYER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Buyer represent that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or other entity that he/she is duly authorized to enter into the Agreement on behalf of such entity.
- 18) **SELLER'S CERTIFICATION:** By entering into this Agreement, each person executing this Agreement as Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Idaho, and if acting on behalf of a corporation, partnership, or the entity that he/she is duly authorized to enter in the Agreement on behalf of such entity.
- 19) **DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS:** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the Buyers with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the Buyers of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.
- A) **Sellers' disclosure:** Sellers have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
- B) **Buyers' acknowledgment:** Buyers have received the pamphlet Protect you Family from Lead in Your Home and waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

- 11
- C) **Agent's Acknowledgment:** Agent has informed the Sellers of the Sellers' obligations under 42 U.S.C. 4582(d) and is aware of their responsibility to ensure compliance.
- D) **Certification of Accuracy:** Parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by each is true and accurate.
- 20) **MOLD DISCLOSURE:** All Buyers of Idaho properties acknowledge the following: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller, Seller's Agent or Buyer's Agent cannot and does not represent or warrant the absence of mold. It is the Buyer or Tenant's obligation to determine whether a mold problem is present. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent or lease contingent upon the results of that inspection. A Seller, Seller's Agent or Buyer's Agent who provides this Mold Disclosure Statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent or lease. The undersigned, Seller and/or Seller's Agent disclose that they have knowledge that the building or buildings on the property have mold present in them. This disclosure is made in recognition that all inhabitable properties contain mold, as defined by the Idaho Mold Disclosure Act (any mold, fungus, mildew or spores). The undersigned is not representing that a significant mold problem exists or does not exist on the property, as such a determination may only be made by a qualified inspector.

If Seller knows a building located on the property has been tested for mold, Seller has previously provided or with this Disclosure provides the Buyer a copy of the results of that test (if available) and evidence of any subsequent mitigation or treatment.



The undersigned Buyer, Buyer's Agent or Statutory Broker acknowledges receipt of this Disclosure, the test results (if available) and evidence of subsequent mitigation or treatment. The undersigned Buyer agrees that it is his responsibility to hire a qualified inspector to determine if a significant mold problem exists or does not exist on the property. Buyer further acknowledges that the Seller, Seller's Agent, Buyer's Agent

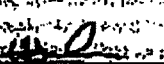
and/or Statutory Broker, who have provided this Disclosure, are not liable for any action based on the presence of or propensity for mold in the property.

- 21) **RADON DISCLOSURE:** Pursuant to the Idaho Radon Control Act, the Sellers hereby provide to the Buyers the following disclosure: RADON GAS; Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal guidelines have been found in buildings in Idaho, additional information regarding radon and radon testing may be obtained from your county or state public health unit. This property has not been tested for radon and radon mitigation treatment has not been done on this property.
- 22) **MEGAN'S LAW DISCLOSURE:** Certain individuals are required to register their address with the local law enforcement agencies as part of Idaho's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Idaho Department of Justice in Boise, Idaho, and the probation officers assigned to the area.
- 23) **NOXIOUS WEEDS DISCLOSURE:** Buyer of property in the State of Idaho should be aware that this property contains noxious weeds. The laws of the State of Idaho require owners of property within this State to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County Extension Agent or Weed Control Board.
- 24) **CONFIDENTIALITY:** Buyer and Seller shall not disclose any terms or provisions of this Agreement to any other Real Estate Broker, Real Estate Agency Appraiser or to any persons not party to this Agreement, except for those professionals who are designated or approved in writing by both Buyer and Seller. The terms of this paragraph shall survive closing.
- 25) **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement and all clauses herein.
- 26) **ATTORNEYS' FEES:** Buyer and Seller acknowledge the real estate is located in the State of Idaho, and therefore, all aspects of the Purchase and Sale Agreement and all aspects or related contracts shall be governed by Idaho law. In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs. Buyer shall pay for preparation of legal documents necessary to close transaction, as well as any due diligence in regards to contingencies. Seller shall pay its own legal costs for review of documents.
- 27) **NOTICE:** Any notice in writing required to be given hereunder shall be completed when deposited in the United States Mail, return receipt requested, postage prepaid and

- 30) **ACKNOWLEDGEMENT:** By their execution of this document, all Parties to this Agreement acknowledge they have read and fully understand the Terms and Conditions stated herein and, furthermore, acknowledge they have been advised to seek legal advice.
- 31) **ACCEPTANCE:** Buyer agrees to purchase the above-described property on the terms and conditions set forth in the above offer and grants to Buyer's Broker until Five o'clock (5:00) P.M. MST on Monday, October 22, 2007 to secure Seller's written acceptance.
- 32) **ENTIRE AGREEMENT:** This Agreement and all exhibits hereto and any other written agreements entered into herewith shall constitute the entire understanding of the Parties as to the subject matter hereof and thereof and fully supersede all prior and written agreements, including, but not limited to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties, and any other understandings between the Parties with respect to such matter.

[Signature Page Follows]

SELLER:
DATED this 22 day of Oct, 2007
Johnnie L. & Richard A. Robertson

Johnnie L. Robertson

Richard A. Robertson
8701 Little Willow Road
Payette, ID 83661
Phone: 208-642-9728

BUYER:
DATED this 22 day of October, 2007
MidAmerican Nuclear Energy Company

By: Bill Kearns, President
666 Grand Avenue
Des Moines, IA 50309
Phone: 515-281-2926

SELLER'S BROKER:
DATED this 22 day of Oct, 2007


JOHN KNIFE/Seller's Broker

BUYER'S BROKER:
DATED this 22 day of Oct, 2007


MARK NOREM/Buyer's Broker

Handwritten mark

Boise, ID 83701
208-345-3163 (Office)
208-344-0936 (Fax)
208-890-1901 (Mobile)

Big Timber MT 59011
406-932-4606 (Office)
406-932-4605 (Fax)
406-930-4606 (Mobile)

CJH

EXHIBIT 'A'
LITTLE WILLOW KENNEL RANCH
LEGAL DESCRIPTION

PARCEL I

Government Lots 1, 2, 3, and 4; SE $\frac{1}{4}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$; and SW $\frac{1}{4}$ in Section 1, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho;
EXCEPTING THEREFROM the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$.

PARCEL II

N $\frac{1}{2}$ of Section 2, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho.

PARCEL III

W $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; and NW $\frac{1}{4}$ NW $\frac{1}{4}$ in Section 12, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho;

EXCEPTING THEREFROM the following described parcel:

Beginning at the NW 1/16 corner (Northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$) of said Section 12;
thence Easterly along the North 1/16 line, S 89°05'28" E, 594.00 feet;
thence departing said North 1/16 line, S 00°35'55" W, 167.50 feet to an iron pin being the Point of

Beginning;

thence S 89°24'05" E, 208.00 feet to an iron pin;
thence S 00°35'55" W, 208.00 feet to an iron pin;
thence N 89°24'05" W, 208.00 feet to an iron pin;
thence N 60°35'55" E, 208.00 feet to the Point of Beginning.

IN WASHINGTON COUNTY, IDAHO:

IN TOWNSHIP 10 NORTH, RANGE 3 WEST OF THE BOISE MERIDIAN:

Section 28: SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 35: E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$

EXCEPTING THEREFROM all minerals and mineral rights appurtenant to said property; and subject to all existing, reserved and/or granted easements, restrictions and rights of way, as disclosed by Warranty Deed recorded March 18, 1981, Instrument No. 122577, Book 101, Page 2, Official Records.

According to the office of the County Assessor, the address associated with the referenced real estate is:

No address associated with this parcel



First American Title Company of Idaho, Inc.

National Commercial Services
9465 W Emerald Suite 206, Boise, ID 83704
(208)321-5115 - Fax (866)706-9418

**ESCROW INSTRUCTIONS
RELEASE OF FUNDS PRIOR TO CLOSE**

To: First American Title Company of Idaho, Inc.
National Commercial Services
9465 W Emerald Suite 206,

Boise, ID 83704
Escrow Officer: Amy Bishop

File No.: NCS-319205-BOI (ab)

Today's Date: 10/23/2007
Settlement Date:

Re: 8701 & 8719 Little Willow Road, Payette, ID

You hold in the above referenced escrow the sum of **\$150,000**.

Buyer and Seller have agreed that the sum of **\$150,000** is to be released prior to the consummation and closing of this escrow.

Buyer understands that First American Title Company of Idaho, Inc. National Commercial Services and its employees make no warranty or representation of any kind, expressed or implied as to the ownership of, or title to, the property described in this escrow, nor as to any encumbrances or liens thereon, nor as to the condition and/or the ultimate outcome of this escrow nor in any manner or form as an inducement to make the above payment. Buyer further realizes that no instruments in Buyer's favor have been recorded, nor Policy of Title Insurance issued. Buyer nevertheless desires to release said funds.

THEREFORE, from funds now on deposit in this escrow, you are instructed to pay **\$150,000** as follows:

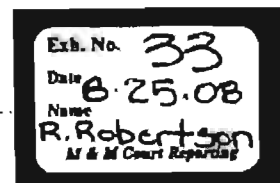
| | |
|--------------------|-----------------------------------|
| \$75,000 | to: Robertson Kennels, Inc. |
| \$75,000 | to: Richard and Johnnie Robertson |
| Grand Total | \$150,000 |

Whether or not this escrow closes, you are not to be held liable or responsible for any loss or damage which Buyer might sustain by reason of making the above payment.

Escrow Holder will not disburse until funds deposited in escrow have cleared through bank on which drawn.

Each of the undersigned states and declares that he/she has read the foregoing instructions and understands, accepts and approves them and does hereby acknowledge receipt of a copy of these instructions.

See Notary Acknowledgment Page Attached Hereto
Page 1 of 2



Oct 23 07 04:19p

Richard Robertson

10/23/2007 2:47:14 PM PAGE

(208) 642-3313
3/004 Fax Server

p.3

First American Title Company of Idaho, Inc. National
Commercial Services

File No.: NCS-319205-BOI (ab)

Date: 10/23/2007

Robertson Kennels, Inc. an Idaho Corp.

Mid Nuclear Holding Company

Robertson Kennels INC
By: *Richard A. Robertson President*
Its: *Richard A. Robertson*

By: _____
Its: _____

Johnnie L. Robertson
Johnnie Robertson

Richard A. Robertson
Richard Robertson

First American Title Company of Idaho, Inc. National
Commercial Services

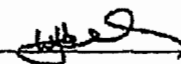
File No.: NCS-319205-BOI (ab)

Date: 10/23/2007

Robertson Kennels, Inc. an Idaho Corp.

MidAmerican Nuclear Energy Company, LLC

By: _____
Its: _____

By:  _____
Its: William J. Fehrman
President

Johnnie Robertson

Richard Robertson

10-24-'07 16:10 FROM-Knipe Land
Oct 24 07 02:23p Richard Robertson
10-24-07 10:32 FROM-Knipe Land

T-015 P002/002 F-038
(208) 842-3313 P.C.
T-014 P002/003 F-039

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 206
Boise, ID 83704

October 23, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.

Johnnie L. Robertson
Johnnie Robertson

Richard H. Robertson Oct 24, 2007
Richard Robertson

Robertson kennels, Inc.

Robertson Kennels, Inc.

By *Richard H. Robertson* President
Its *Richard H. Robertson* President

Knipe Land Company Inc.

[Signature]
Broker

| | |
|------------------------|--------------|
| Exh. No. | 34 |
| Date | 8-25-08 |
| Name | R. Robertson |
| At the Court Reporting | |

Dec 19 07 05:44p Richard Robertson
12-19-'07 14:49 FROM-Knipe Land

(208) 642-3313 P.2
T-124 P004/004 F-351

2

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 260
Boise, ID 83704

December 18, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

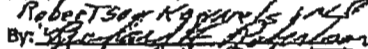

Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.

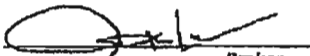

Johnnie Robertson

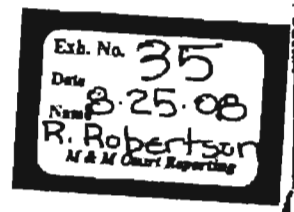

Richard Robertson

Robertson Kennels, Inc.

By: 
Its:  President

Knipe Land Company Inc.


Broker





Robertson's Kennels Inc.

8719 Little Willow Road
Payette, ID 83661
(208) 642-2994 • Fax (208) 642-3313



attn: amy Bishop
amy Please go ahead and Deposit \$150,000.00 less
Commission into each account and after Deposit
would you please fax me that it is Done
Thank you
Richard Robertson

RICHARD A ROBERTSON
OR JOHNNIE L ROBERTSON
PH. 208-642-9728
8725 LITTLE WILLOW RD.
PAYETTE, ID 83661-5110

32-372/1231
153350069404

1871

DATE

PAY TO THE
ORDER OF

Void

DOLLARS

usbank
First American Commercial Bank

usbank.com

MEMO

12310372912 153350069404 1871



ROBERTSON KENNELS INC
PH. 208-642-2994
8719 LITTLE WILLOW RD
PAYETTE, ID 83661

4371

95-000/1232 77

PAY
TO THE
ORDER OF

Void

DATE

DOLLARS

**BANK OF THE
CASCADES**
www.botc.com 877-417-3400

12320024

FOR

110043711 1232060241 77 00439 611

Exh. No. 36
Date 8-25-08
Name R. Robertson
H & M Court Reporting

AMENDMENT TO AGREEMENTS TO SELL AND PURCHASE

THIS AMENDMENT TO AGREEMENTS TO SELL AND PURCHASE (this "*Amendment*") is made as of this 20th day of December, 2007, by and among JOHNNIE L. ROBERTSON AND RICHARD A. ROBERTSON, husband and wife (the "*Robertsons*"), ROBERTSON KENNELS, INC., an Idaho corporation ("*Robertson Kennels*"), and MIDAMERICAN NUCLEAR ENERGY COMPANY, LLC, a Delaware limited liability company ("*Buyer*"). The Robertsons and Robertson Kennels are referred to collectively herein as the "*Sellers*."

RECITALS

A. The Robertsons and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette County, Idaho, commonly referred to by the parties as the Robertson Personal Residence property (the "*Robertson PSA*").

B. The Robertsons and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette County, Idaho, commonly referred to by the parties as the Little Willow Ranch property (the "*Little Willow Ranch PSA*").

C. Robertson Kennels and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette and Washington Counties, Idaho, commonly referred to by the parties as the Little Willow Kennel Ranch property (the "*Kennel Ranch PSA*").

D. The Robertson PSA, the Little Willow Ranch PSA, and the Kennel Ranch PSA are referred to collectively herein as the "*Agreements*."

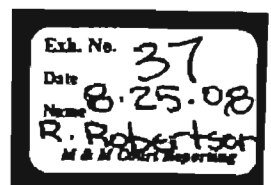
E. The parties now desire to amend the Agreements in certain respects.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Due Diligence.** Section 8 of the Agreements is hereby amended to provide that the Due Diligence Date shall be January 21, 2008 at 5:00 p.m. MST. Section 8(A)(4) is hereby amended to provide that the Due Diligence Resolution Date shall be January 25, 2008 at 5:00 p.m. MST.

2. **Additional and Final Earnest Money.** Section 3(C) of the Little Willow Ranch PSA and the Kennel Ranch PSA is hereby amended to provide that not later than December



21, 2007, Buyer shall deposit into escrow with the Title Company additional earnest money in the sum of \$150,000.00 (\$75,000.00 under each of the agreements), which shall be non-refundable and shall be paid by the Title Company to Sellers upon Sellers' request. In addition, the Final Earnest Money payment under each of the agreements shall be reduced to \$125,000.00 (rather than \$150,000.00), with the Final Earnest Money payment under both the agreements totaling \$250,000.00. The Final Earnest Money in the total amount of \$250,000.00 (\$125,000.00 under each of the agreements) shall be deposited in escrow with the Title Company by no later than January 25, 2008, subject to the terms and conditions of Section 8(A)(1) of the agreements.

3. **Confidentiality.** In recognition of information that has already become public and the future need for certain public disclosures, Section 25 of the Robertson PSA and Section 24 of the Little Willow Ranch PSA and Kennel Ranch PSA, and any other confidentiality agreement entered into by any of the signatories hereto in relation to the transactions contemplated in the Agreements, are hereby amended to provide that the parties may as each in their own discretion deems necessary publicly disclose the basic existence and location of the properties that are the subject of the Agreements, and the identity of the parties to the Agreements. The parties further confirm and acknowledge that Buyer may in its sole discretion publicly disclose other information about its activities on the properties and project plans. All other matters shall remain confidential as previously provided therein.

4. **Miscellaneous.** Except as set forth herein, the Agreements remain in full force and effect. This Amendment may be exercised in multiple counterparts, each of which shall be deemed an original. Delivery of an executed signature page to this Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart hereto. All capitalized terms used in this Amendment, which are not defined herein, shall have the same meaning as in the Agreements.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date written above.

RICHARD A. ROBERTSON



JOHN KNIPE
Sellers' Broker



JOHNNIE L. ROBERTSON



ROBERTSON KENNELS, INC.
an Idaho corporation

By: 
Name: Richard A. Robertson
Its: President

MIDAMERICAN NUCLEAR
ENERGY COMPANY, LLC
a Delaware limited liability company

MARK NOREM
Buyer's Broker

By: 
Name: Bill Fehman
Its: President



AMENDMENT TO AGREEMENT TO SELL AND PURCHASE - 3
91999-0743/EQAL/3106105A

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date written above.

RICHARD A. ROBERTSON

JOHN KNIPE
Sellers' Broker

JOHNNIE L. ROBERTSON

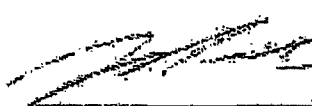
ROBERTSON KENNELS, INC.
an Idaho corporation

By: _____
Name: Richard A. Robertson
Its: President

MIDAMERICAN NUCLEAR
ENERGY COMPANY, LLC
a Delaware limited liability company

MARK NOREM
Buyer's Broker

By:  12/20/07
Name: Bill Fehrman
Its: President

 12/19/07

AMENDMENT TO AGREEMENT TO SELL AND PURCHASE - 3
99999-0743/LEGAL13806805.4

SECOND AMENDMENT TO AGREEMENTS TO SELL AND PURCHASE

THIS SECOND AMENDMENT TO AGREEMENTS TO SELL AND PURCHASE (this "Second Amendment") is made as of this 21st day of January, 2008, by and among JOHNNIE L. ROBERTSON AND RICHARD A. ROBERTSON, husband and wife (the "Robertsons"), ROBERTSON KENNELS, INC., an Idaho corporation ("Robertson Kennels"), and MIDAMERICAN NUCLEAR ENERGY COMPANY, LLC, a Delaware limited liability company ("Buyer"). The Robertsons and Robertson Kennels are referred to collectively herein as the "Sellers."

RECITALS

A. The Robertsons and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette County, Idaho, commonly referred to by the parties as the Robertson Personal Residence property (the "Robertson PSA").

B. The Robertsons and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette County, Idaho, commonly referred to by the parties as the Little Willow Ranch property (the "Little Willow Ranch PSA").

C. Robertson Kennels and Buyer are parties to an Agreement to Sell and Purchase, dated as of October 22, 2007, concerning the purchase by Buyer of certain real property located in Payette and Washington Counties, Idaho, commonly referred to by the parties as the Little Willow Kennel Ranch property (the "Kennel Ranch PSA").

D. The Robertson PSA, the Little Willow Ranch PSA, and the Kennel Ranch PSA, as amended by that certain Amendment to Agreements to Sell and Purchase dated December 20, 2007, are referred to collectively herein as the "Agreements."

E. The parties now desire to amend the Agreements in certain respects.

AGREEMENT

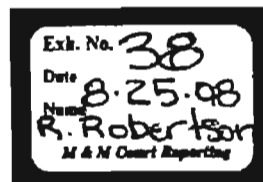
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Due Diligence.** Section 8 of the Agreements is hereby amended to provide that the Due Diligence Date shall be February 5, 2008 at 5:00 p.m. MST. Section 8(A)(4) is hereby amended to provide that the Due Diligence Resolution Date shall be February 9, 2008 at 5:00 p.m. MST.

SECOND AMENDMENT TO AGREEMENTS TO SELL AND PURCHASE - 1

24078-0050/LEGAL/13889520.1

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2. **Final Earnest Money.** Section 3(C) of the Little Willow Ranch PSA and the Kennel Ranch PSA is hereby amended to provide that the Final Earnest Money in the total amount of \$250,000.00 (\$125,000.00 under each of the agreements) shall be deposited in escrow with the Title Company by no later than January 25, 2008. Until January 25, 2008 at 5:00 p.m. MST, the deposit of the Final Earnest Money shall remain fully subject to the terms and conditions of Section 8 of the Agreements and as described therein Buyer's determination, in its sole discretion and for any reason, whether Buyer desires to proceed with the transaction contemplated by the Agreements. Once deposited, the Final Earnest Money shall be non-refundable and shall be paid by the Title Company to Sellers upon Sellers' request. Deposit of the Final Earnest Money shall not otherwise affect Buyer's right as described in Section 8 of the Agreements to determine prior to the expiration of the Due Diligence Date, as extended by this Amendment, in its sole discretion and for any reason, whether Buyer desires to proceed with the transaction.

3. **Buyer's Remedies.** Section 15 of the Robertson, Little Willow Ranch, and Kennel Ranch PSAs is hereby corrected and amended by replacing the phrase "Additional Non-Refundable Deposit" with "Final Earnest Money."

4. **Seller's Remedies.** Seller's remedies in Section 16 of each of the Robertson, Little Willow Ranch and Kennel Ranch PSAs remain subject to the representations, conditions, and contingencies set forth in Section 8. In the event that Buyer determines not to proceed with the transaction contemplated by the Agreements and terminates the Agreements in accordance with Section 8, including notifying Seller of Buyer's wish to terminate prior to February 5, 2008 at 5:00 p.m. MST in accordance with Section 8(A)(4), Seller's sole and exclusive remedy shall be retention of the total amount of Earnest Money, Initial Earnest Money, and Additional Earnest Money that has been deposited by Buyer to date, together with the Final Earnest Money total amount if Buyer does not notify Seller of Buyer's wish to terminate prior to January 25, 2008 at 5:00 p.m. MST in accordance with Section 8(A)(4).

5. **Miscellaneous.** Except as set forth herein, the Agreements, including but not limited to all confidentiality obligations, remain in full force and effect. This Second Amendment may be exercised in multiple counterparts, each of which shall be deemed an original. Delivery of an executed signature page to this Second Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart hereto. All capitalized terms used in this Second Amendment, which are not defined herein, shall have the same meaning as in the Agreements.

[Signatures on following page]

SECOND AMENDMENT TO AGREEMENT TO SELL AND PURCHASE - 2

24578-00501.LEGAL1388520.1

C:\Documents and Settings\mynr\My Documents\2nd Amendment to LWC PSA.DOC

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date written above.

RICHARD A. ROBERTSON

Richard A. Robertson
1-21-08

JOINNIE L. ROBERTSON

Joinnie L. Robertson
1-21-08

ROBERTSON KENNELS, INC.
an Idaho corporation

By: *Richard A. Robertson*
Name: Richard A. Robertson
Its: President 1-21-08

MIDAMERICAN NUCLEAR
ENERGY COMPANY, LLC
a Delaware limited liability company

By: *Bill Folman* 1/20/08
Name: Bill Folman
Its: President

JOHN KNIPE
Sellers' Broker

Rowena Strain
Agent Knipe Land Co. Inc.
Rowena Strain

MARK NOREM
Buyer's Broker

SECOND AMENDMENT TO AGREEMENT TO SELL AND PURCHASE - 3
20080204 10:41:19 AM
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JAN 11 2009 01:53:41 10/21/2008 10:18 AM

10/21/2008 10:18 AM

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date written above.

RICHARD A. ROBERTSON

JOHN KINPE
Seller's Broker

JOHNNIE L. ROBERTSON

ROBERTSON KINNELS, INC.
an Idaho corporation

By _____
Name: Richard A. Robertson
Its President

MIDAMERICAN NUCLEAR
ENERGY COMPANY, LLC
a Delaware limited liability company

MARK NOREM
Buyer's Broker

By _____
Name: Bill Peterson
Its President

SECOND AMENDMENT TO AGREEMENT TO SELL AND PURCHASE - J
as to the 2008-2009 season
C:\Documents and Settings\Bill Peterson\My Documents\2nd Amendment to LWC PLADOC

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date written above.

RICHARD A. ROBERTSON

Richard A. Robertson
1-21-08

JOHN KNIDE

Sellers' Broker

[Signature] 1/22/2007

JOHNNEE L. ROBERTSON

Johnnee L. Robertson
1-21-08

[Signature]
1/22/2007

ROBERTSON KENNELS, INC.

an Idaho corporation

By: *Richard A. Robertson*
Name: Richard A. Robertson
Its: President 1-21-08

MARK NORLM

Buyer's Broker

SEDAMERICAN NUCLEAR
ENERGY COMPANY, LLC
a Delaware limited liability company

By: *[Signature]*
Name: Bill Fehrmann
Its: President

SECOND AMENDMENT TO AGREEMENT TO SELL AND PURCHASE

1. The parties hereto, SEDAMERICAN NUCLEAR ENERGY COMPANY, LLC and the undersigned, have agreed to amend the Agreement to Sell and Purchase of the property located at 10000 N. 100th St., Suite 100, Boise, Idaho 83713, as follows:



251 East Front Street, Suite 400

Boise, ID 83702-7310

PHONE: 208.343.3434

FAX: 208.343.3232

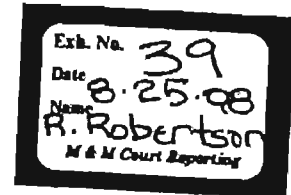
www.perkinscoie.com

Robert Maynard
PHONE (208) 387-7508
EMAIL RMaynard@perkinscoie.com

January 25, 2008

Richard and Johnnie Robertson
8701 Little Willow Rd.
Payette, ID 83661

**By Certified Mail / Return
Receipt Requested**



Robertson Kennels, Inc.
Attn: Richard Robertson
8719 Little Willow Rd.
Payette, ID 83661

**By Certified Mail / Return
Receipt Requested**

**Re: Agreements to Sell and Purchase Little Willow Creek Properties
Notice of Termination
Client-Matter No. 24878-0050**

Dear Mr. and Mrs. Robertson:

As you are aware, this firm represents MidAmerican Nuclear Energy Company, LLC ("MNEC") in connection with three separate Agreements to Sell and Purchase dated October 22, 2007 (as amended on December 20, 2007 and January 21, 2008), between Richard A. Robertson and Johnnie L. Robertson, husband and wife, or Robertson Kennels, Inc., as Sellers respectively, and MNEC, as Buyer (collectively, the "Agreements"). This letter is written notice of MNEC's determination to terminate the Agreements in its sole discretion and for any reason, in accordance with Section 8 and Section 8(A)(4), effective immediately. This letter supersedes and replaces my letter to you dated January 22, 2008 regarding the Agreements and various title exceptions and property conditions.

MNEC has now determined that it will not proceed with its Energy Center Project planned for the Little Willow Creek Properties at this time, and is terminating the Agreements for that reason. MNEC greatly appreciates and thanks you for the cooperation and patience you have shown in working with MNEC and its contractors on property and Project due diligence and related activities over the past few months. However, because MNEC is not proceeding with its Project and planned use of your properties at this time, it is not in a position to proceed with the purchase of these properties.

24878-0050/LEGAL/3908519 1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

666

KLC02313

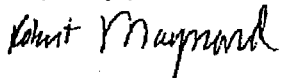
January 25, 2008
Page 2

In accordance with the Agreements, MNEC acknowledges your right to retain the earnest money amounts already deposited under each Agreement, totaling \$450,000.00, as your sole and exclusive remedy for this termination. MNEC will also work with you in a safe and orderly shutdown of its activities, removal of personnel and equipment, reclamation and clean up of the properties, and continue to be responsible with its contractors for any damage and liability from its activities on the properties, in accordance with the Agreements. Cindy Crane or other MNEC representatives will be contacting you very soon regarding shutdown and related reclamation and clean up activities.

We emphasize that the confidentiality provisions in each of the Agreements and preceding agreements with you and the Buyer and Seller brokers survive the termination and remain in effect. We request everyone's cooperation in maintaining the confidentiality of this notice and termination, particularly while MNEC informs other persons who have supported and been involved with the Project of its determination not to proceed with the Project at this time.

I am happy to discuss with your counsel any questions you may have.

Very truly yours,



Robert Maynard

RAM/ERB:lc

cc: John Knipe
Mark Norem
Derek A. Pica
Bill Fehrman
Cindy Crane

Subject: FW: Payette property

Date: Thursday, January 31, 2008 6:35 PM

From: John Knipe <john@knipeland.com>

To: "sellerfile@knipeland.com" <sellerfile@knipeland.com>, Rowena Strain <rowena@knipeland.com>

----- Forwarded Message

From: <RobertsonRanch@aol.com>

Date: Thu, 31 Jan 2008 19:02:50 EST

To: <john@knipeland.com>

Subject: Payette property

John:

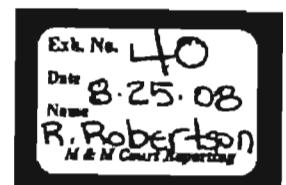
Thank you for writeing the letter to Mark, Now to see if we get a answer. I have meet with Cindy and Bob two times and have not got any offer of money, I gave them a list of things that will have to be done, they said they would leave the place in better shape than when they came, includeing the Mobil home, How do we have the ranch listed ? Personal property at \$3,000,000.00 ? and Business property at \$ 4,500,000.00 ? I hope we get somebody interested.

Take care.

Richard Robertson

Start the year off right. Easy ways to stay in shape <<http://body.aol.com/fitness/winter-exercise?NCID=aolcmp00300000002489>> in the new year.

----- End of Forwarded Message



Subject: Re: payette property
Date: Monday, February 11, 2008 2:02 PM
From: RobertsonRanch@aol.com
To: <ronastrain@yahoo.com>

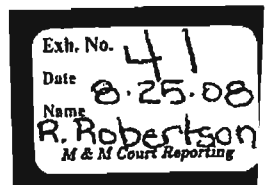
Rowena:

The \$22,500.00 is the .05 percent real Astate fee for selling the property and I thought since it didn't sell it would come back to us.

That is interesting on the French company looking for a place to build a plant, maybe somebody should get in touch with them?

Richard

The year's hottest artists on the red carpet at the Grammy Awards. AOL Music takes you there. <<http://music.aol.com/grammys?NCID=aolcmp00300000002565>>





Intermountain Multiple Listing Service, Inc.
CHANGE FORM

****ALL FIELDS MARKED WITH AN ASTERISK (*) MUST BE FILLED IN.****

*DATE: 3/19/68 *LIST #: 98 32574-5
*ADDRESS: 8719 Little Willow *CITY: Dayton
*LIST OFFICE: Krieger Ranch Co. *LISTING AGENT: Lawrence J. Jahn

*STATUS CHANGE: (Check One)

- ☐ **ACT** Active
() CHECK HERE IF LISTING WAS PREVIOUSLY OFF THE MARKET AND YOU WISH TO RETURN TO ACTIVE STATUS

- ☐
- WDN Withdrawn *Withdrawn Date: ____/____/____

- ☐ **CONT** Contingent *Type: ☐ Financing ☐ Sale
☐ Multiple ☐ Other
(*Note contingent status can only be checked if Seller's Addendum and Burop Clause are present)

- ☐ CAN Canceled *Cancellation Date: ____/____/____

- ☐ PND Pending *Contract Date: _____
*Estimated Close Date: _____

- ☐ **SOLD** THE FOLLOWING INFORMATION MUST BE COMPLETED ON SELDS. IF THE LISTING IS NOT CURRENTLY IN THE COMPUTER, COMPLETE AND ATTACH A PROPERTY DATA FORM.

Tested = 5%

- ▼ HOW SOLD (Check One)
- | | | | |
|--------------------------|----|-------|---------------------------|
| <input type="checkbox"/> | 1. | CONV | Conventional |
| <input type="checkbox"/> | 2. | FHA | FHA |
| <input type="checkbox"/> | 3. | VA | VA |
| <input type="checkbox"/> | 4. | ASSUM | Assumption |
| <input type="checkbox"/> | 5. | CASH | Cash |
| <input type="checkbox"/> | 6. | CFD | Contract for Deed |
| <input type="checkbox"/> | 7. | OWC | Owner Will Carry |
| <input type="checkbox"/> | 8. | IHA | Idaho Housing Association |
| <input type="checkbox"/> | 9. | PRV | Private |
| <input type="checkbox"/> | 0. | OTH | Other |

* Contract Date: _____
 * Actual Closing Date: _____
 * Sold Price: \$ _____

* Selling Agent: _____

*Selling Office: _____

OTHER CHANGES: Use this space to make any changes not covered above. List the field to be changed and the correct information.

| Field | Change to: |
|-------|------------|
| | |
| | |
| | |

***OWNER SIGNATURE REQUIRED FOR PRICE CHANGE OR EXTENSION**

Change Price to: \$ 2.00 Extend Date to: 9/10/2005

Seller Signature: Richard H. Fotherman Date: 2/20/08

Seller Signature: _____ Date: _____

*Submitted by: D. L. Green Date: 2/19/2008
(Signature of Broker or Authorized Agent)

Revision 7/2003

Printed Using Professional Computer Forms Co. On-Line Font Software 02/05

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KLC01516



Intermountain Multiple Listing Service, Inc
CHANGE FORM



****ALL FIELDS MARKED WITH AN ASTERISK (*) MUST BE FILLED IN.****

*DATE: 2/19/2008

*LIST #: 98323454

*ADDRESS: _____

*CITY: Bozeman

*LIST OFFICE: Krupa Land Co.

*LISTING AGENT: Rowena Strain

***STATUS CHANGE: (Check One)**

☐ ACT

Active

() CHECK HERE IF LISTING WAS PREVIOUSLY OFF THE MARKET AND YOU WISH TO RETURN TO ACTIVE STATUS

☐ WDN

Withdrawn

*Withdrawn Date: _____

☐ CONT

Contingent

*Type:

☐ Financing

☐ Sale

☐ Multiple

☐ Other

(*Note contingent status can only be checked if Seller's Addendum and Bump Clause are present)

☐ CAN

Canceled

*Cancellation Date: _____

☐ PND

Pending

*Contract Date: _____

*Estimated Close Date: _____

☐ SOLD

THE FOLLOWING INFORMATION MUST BE COMPLETED ON SOLDS. IF THE LISTING IS NOT CURRENTLY IN THE COMPUTER, COMPLETE AND ATTACH A PROPERTY DATA FORM

***HOW SOLD (Check One)**

☐ 1. CONV Conventional

☐ 2. FHA FHA

☐ 3. VA VA

☐ 4. ASSUM Assumption

☐ 5. CASH Cash

☐ 6. CFD Contract for Deed

☐ 7. OWC Owner Will Carry

☐ 8. IHA Idaho Housing Association

☐ 9. PRV Private

☐ 0. OTH Other

*Contract Date: _____

*Actual Closing Date: _____

*Sold Price: \$ _____

*Selling Agent: _____

*Selling Office: _____

OTHER CHANGES: Use this space to make any changes not covered above. List the field to be changed and the correct information.

Field

Change to:

| | |
|--|--|
| | |
| | |
| | |
| | |

***OWNER SIGNATURE REQUIRED FOR PRICE CHANGE OR EXTENSION**

Change Price to: \$ _____

Extend Date to: _____

Seller Signature: _____

Date: 2/20/08

Seller Signature: _____

Date: _____

*Submitted by: _____

(Signature of Broker or Authorized Agent)

Date: 2/19/08



Intermountain Multiple Listing Service, Inc
CHANGE FORM



ALL FIELDS MARKED WITH AN ASTERISK (*) MUST BE FILLED IN.

*DATE: 2-19-2008
*ADDRESS: Little Willow
*LIST OFFICE: Knappe Road Co

*LIST #: 95-1565
*CITY: Payette
*LISTING AGENT: Rowena Strain

*STATUS CHANGE: (Check One)

☐ ACT Active
() CHECK HERE IF LISTING WAS PREVIOUSLY OFF THE MARKET AND YOU WISH TO RETURN TO ACTIVE STATUS

☐ WDN Withdrawn *Withdrawn Date: 1/1/

☐ CONT Contingent *Type: ☐ Financing ☐ Sale
☐ Multiple ☐ Other
(*Note contingent status can only be checked if Seller's Addendum and Bump Clause are present)

☐ CAN Canceled *Cancellation Date: 1/1/

☐ PND Pending *Contract Date: 1/1/
*Estimated Close Date: 1/1/

☐ SOLD THE FOLLOWING INFORMATION MUST BE COMPLETED ON SOLDS. IF THE LISTING IS NOT CURRENTLY IN THE COMPUTER, COMPLETE AND ATTACH A PROPERTY DATA FORM.

*HOW SOLD (Check One)

- ☐ 1. CONV Conventional
☐ 2. FHA FHA
☐ 3. VA VA
☐ 4. ASSUM Assumption
☐ 5. CASH Cash
☐ 6. CFD Contract for Deed
☐ 7. OWC Owner Will Carry
☐ 8. IHA Idaho Housing Association
☐ 9. PRV Private
☐ 0. OTH Other

*Contract Date: 1/1/
*Actual Closing Date: 1/1/
*Sold Price: \$ 590

*Selling Agent: _____

*Selling Office: _____

OTHER CHANGES: Use this space to make any changes not covered above. List the field to be changed and the correct information.

| Field | Change to: |
|-------|------------|
| | |
| | |
| | |

*OWNER SIGNATURE REQUIRED FOR PRICE CHANGE OR EXTENSION.

Change Price to: \$ _____ Extend Date to: 9/10/2008

Seller Signature: Richard H. Strain Date: 2-20-08

Seller Signature: _____ Date: _____

*Submitted by: _____ Date: _____

(Signature of Broker or Authorized Agent)

PARCEL I

- A. The Southwest Quarter and the Northwest Quarter of the Southeast Quarter in Section 26 In Township 10 North, Range 3 West, Boise Meridian, Washington County, Idaho.

EXCEPTING THEREFROM all minerals and mineral rights appurtenant to said property; and subject to all existing, reserved and/or granted easements, restrictions and rights of way, as disclosed by Warranty Deed recorded March 18, 1981, Instrument No. 122577, Book 101, page 2, Official Records.

- B. The East Half of Section 35, and

The South Half of the Southwest Quarter, and the Northwest Quarter of the Southwest Quarter, and the North Half of the Northwest Quarter in Section 35 in Township 10 North, Range 3 West, Boise Meridian, Washington County, Idaho.

EXCEPTING THEREFROM all minerals and mineral rights appurtenant to said property; and subject to all existing, reserved and/or granted easements, restrictions and rights of way, as disclosed by Warranty Deed recorded March 18, 1981, Instrument No. 122577, Book 101, page 2, Official Records.

- C. Government Lots 1, 2, 3 and 4 in Section One in Township 9 North, Range 3 West of the Boise Meridian; more particularly described as follows:

The Southeast Quarter of the Northeast Quarter; and the South Half of the Northwest Quarter; and the South Half of Section One;

EXCEPTING therefrom the West Half of the West Half of the Southwest Quarter.

- D. A Parcel of land in Section 12 in Township 9 North, Range 3 West of the Boise Meridian; and more particularly described as follows:

The West Half of the Northeast Quarter; and the East Half of the Northwest Quarter; and the Northwest Quarter of the Northwest Quarter.

EXCEPTING THEREFROM THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12 TOWNSHIP 9 NORTH, RANGE 3 WEST OF THE BOISE MERIDIAN COUNTY OF PAYETTE, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

CONTINUED

| | |
|-----------------------|------------|
| Exh. No. | 43 |
| Date | 8-25-08 |
| Name | R. Roberts |
| M & M Court Reporting | |

KLC0164

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12; THENCE, EAST ALONG THE NORTH LINE OF SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12, A DISTANCE OF 594 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EAST ALONG SAID NORTH LINE, A DISTANCE OF 208 FEET TO A POINT; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID SOUTHEAST OF THE NORTHWEST QUARTER, A DISTANCE OF 208 FEET TO A POINT; THENCE WEST PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 208 FEET TO A POINT; THENCE NORTH ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12 A DISTANCE OF 208 FEET TO THE TRUE POINT OF BEGINNING.

- E. The North Half of Section 2, Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho;

EXCEPTING all oil, gas and minerals in the South Half of the Northwest Quarter as reserved in Book 14, page 464 of Deeds recorded April 20, 1938, Official Records.

PARCEL II

- A. The Southwest Quarter of the Southwest Quarter in Section 5 in Township 9 North, Range 2 West of the Boise Meridian, Payette County, Idaho.

EXCEPTING therefrom half of all oil and gas as disclosed by Deed recorded DECEMBER 3, 1973 in Book 48 of Deeds at page 152808.

- B. In Government Lots 6 and 7 in Section 6 in Township 9 North, Range 2 West of the Boise Meridian, Payette County, Idaho; and more particularly described as follows:

The Southeast Quarter of the Southwest Quarter; and the South Half of the Southeast Quarter; and the Northeast Quarter of the Southeast Quarter.

EXCEPTING therefrom half of all oil and gas as disclosed by Deed recorded DECEMBER 3, 1973 in Book 48 of Deeds at page 152808.

CONTINUED

EXHIBIT "A"

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12 TOWNSHIP 9 NORTH, RANGE 3 WEST OF THE BOISE MERIDIAN COUNTY OF PAYETTE, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12;
THENCE, EAST ALONG THE NORTH LINE OF SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12, A DISTANCE OF 594 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING EAST ALONG SAID NORTH LINE, A DISTANCE OF 208 FEET TO A POINT;
THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID SOUTHEAST OF THE NORTHWEST QUARTER, A DISTANCE OF 208 FEET TO A POINT;
THENCE WEST PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 208 FEET TO A POINT;
THENCE NORTH ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 12 A DISTANCE OF 208 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH A 20 FOOT EASEMENT FOR INGRESS AND EGRESS, WITH THE SOUTHERLY LINE OF SAID ROADWAY EXTENDING FROM THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL 225 FEET MORE OR LESS. IN A SOUTHEASTERLY DIRECTION TO THE INTERSECTION WITH THE WEST LINE OF THE LITTLE WILLOW ROAD.

ah
*This is the one acre
gave to Jeff Weber*

- C. Government Lots 2 and 3 in Section 7 in Township 9 North, Range 2 West of the Boise Meridian, Payette County, Idaho; and the Southeast Quarter of the Northwest Quarter; and the Northeast Quarter; and the Northeast Quarter of the Southwest Quarter; and the North Half of the Southeast Quarter; and the North Half of Government Lot 4; and the North Half of the Southeast Quarter of the Southwest Quarter; and the North Half of the Southwest Quarter of the Southeast Quarter.

EXCEPTING therefrom half of all oil and gas as disclosed by Deed recorded DECEMBER 3, 1973 in Book 48 of Deeds at page 152808.

- D. A Portion of Land in Section 8, Township 9 North, Range 2 West, Boise Meridian, Payette County, Idaho; more particularly described as follows:

The North Half of Section 8; and the North Half of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter.

EXCEPTING therefrom half of all oil and gas as disclosed by Deed recorded DECEMBER 3, 1973 in Book 48 of Deeds at page 152808.

- E. A Portion of Land in Section 12 in Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho; and more particularly described as follows:

The North Half of the Southeast Quarter; and the East Half of the Northeast Quarter; and the North Half of the Southeast Quarter of the Southeast Quarter.

EXCEPTING therefrom half of all oil and gas as disclosed by Deed recorded DECEMBER 3, 1973 in Book 48 of Deeds at page 152808.

- F. A Parcel of Land in the Northeast Quarter of the Southwest Quarter in Section 12 in Township 9 North, Range 3 West, Boise Meridian, Payette County, Idaho; and more particularly described as follows:

OK

CONTINUED

BEGINNING at the Northeast corner of said Northeast Quarter of the Southwest Quarter; thence South 00°22'30" West along the East boundary of the Northeast Quarter of the Southwest Quarter a distance of 1292.74 feet to the Southeast corner of said Northeast Quarter of the Southwest Quarter; thence North 89°06'00" West along the South boundary of said Northeast Quarter of the Southwest Quarter a distance of 715.51 feet to the East right of way line of the County Road; thence following the East right of way line of the County Road North 34°12'30" East 678.28 feet; thence North 06°35'20" East 114.74 feet; thence North 19°02'30" West 159.36 feet; thence North 26°35'00" West 157.42 feet; thence North 17°20'50" West 141.30 feet; thence North 06°30'10" East 186.70 feet to the North boundary of said Northeast Quarter of the Southwest Quarter; thence South 89°22'00" East along the North boundary of said Northeast Quarter of the Southwest Quarter a distance of 472.88 feet to the POINT OF BEGINNING

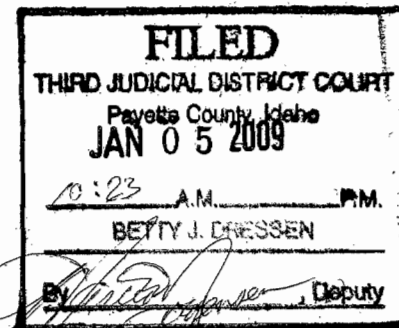
CK

ORIGINAL

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IDAHO STATE BAR NO. 3559

ATTORNEY FOR Defendants



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

KNIFE LAND COMPANY, an Idaho
Corporation,

Plaintiff,

vs.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,

Defendants.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,

Third Party Plaintiffs,

vs.

JOHN KNIPE, an individual,

Third Party Defendant.

Case No. CV 2008-682

**DEFENDANTS' MEMORANDUM
IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT AND IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[FILED UNDER SEAL]

COMES NOW, Defendants / Counterclaimants, Richard A. Robertson and Johnnie L. Robertson, husband and wife; and Robertson Kennels, Inc., and respectfully file with the Court their Defendants' Memorandum in Support of Motion for Partial Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment.

STATEMENT OF FACTS

1. On September 1, 2005, Plaintiff, Knipe Land Company, hereinafter "Knipe Land," and Defendants, Richard A. Robertson and Johnnie L. Robertson, hereinafter Robertson, entered into an Employment Contract wherein, Knipe Land agreed to act as a real estate broker on behalf of Robertsons to sell land owned by Robertsons located in Payette County consisting of approximately 1,400 acres.

2. The Employment Contract entered into between Knipe Land and Robertsons on September 1, 2005, hereinafter "2005 Employment Contract," did not contain a legal description of the real property to be sold. Instead of a legal description, Third Party Defendant, John Knipe, hereinafter "Knipe," wrote in his own handwriting "Broker may attach legal prior to closing" along with a few tax parcel numbers. The 2005 Employee Contract further stated _____ the description would be . . . more particularly described in exhibit "A" by reference made a part hereof, the same as though set out in full herein.

3. The 2005 Employment Contract provided in part:

- In the event that you, or any other broker cooperating with you, shall find a buyer ready, willing and able to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your

employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to 7 percent of said selling price.

- Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the broker, as the balance shall be paid to me. The broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission.

4. The 2005 Employment Contract contained an expiration date of September 1, 2006.

5. On February 6, 2007, Knipe Land and Defendant, Robertson Kennels, Inc., hereinafter "Robertson Kennels," entered into an Employment Contract wherein Knipe Land agreed to act as a real estate agent on behalf of Robertson Kennels to sell land owned by Robertson Kennels located in both Payette and Washington Counties consisting of approximately 1886.89 acres.

6. The Employment Contract entered into between Knipe Land and Robertson Kennels on February 6, 2007, hereinafter "2007 Employment Contract" did not contain a legal description, but simply stated "Robertson Ranch" described as 8719 Little Willow, County of Payette, State of Idaho, more particularly described in exhibit "A" by reference made a part hereof, the same as though set out in full herein. No exhibit "A" was attached.

7. The 2007 Employment Contract provided in part:

- In the event that you, or any other broker cooperating with you, shall find a buyer ready, willing and able to enter into a deal for said price and

terms, or such other terms and price as I may accept, or that during your employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to 5 percent of said selling price.

- Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the broker, as the balance shall be paid to me. The broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission.

8. On or about November 1, 2005, Robertsons and Robert E. & Sheila N. Harmon, hereinafter "Harmons," entered into a Real Estate Purchase and Sale Agreement whereby Harmons agreed to purchase a parcel of real property from Robertsons for Two Million Four Hundred and Seventy-Five Thousand Dollars contingent upon Harmons being able to sell a certain parcel of real property. Paragraph 28 of the Real Estate Purchase and Sale Agreement entered into by Harmons and Robertsons provided in part:

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of life insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission.

9. Harmons paid to Robertson non-refundable earnest money totaling \$35,000.00, all of which was made non-refundable in return for Robertsons agreeing to extend the closing dates several times because Harmons were unable to sell their real property. On or about August 18, 2006, Harmons and Robertsons entered into a Notice to Terminate Contract and Release of Earnest Money whereby \$15,000.00 of earnest money was returned to Harmons. Harmons never defaulted under the terms of the Real Estate Purchase and Sale Agreement they entered into with Robertsons as Harmons' contingency of selling their real property so they would have funds to purchase Robertsons' real property was never met.

10. The only reason Robertsons received any money from Harmons was in consideration of Robertsons extending the closing date. The money paid by Harmons to Robertsons was released by Harmons' real estate broker to Knipe Land, who then paid the \$35,000.00 to Robertsons from Knipe Land's trust account. Further, Knipe Land never requested a portion of the \$35,000.00 from Robertsons.

11. On September 24, 2007, Defendants entered into an Agreement to Sell and Purchase their real property located in Payette and Washington Counties to MidAmerican Nuclear Holding Company, hereinafter "MidAmerican." Pursuant to the terms of the Agreement to Sell and Purchase, MidAmerican agreed to pay to Defendants an initial non-refundable earnest money directly to Defendants at the time the Agreement to Sell and Purchase was signed by all parties in the amount of \$150,000.00. An additional non-refundable earnest money was to be paid to Defendants on October 22, 2007 if MidAmerican did not terminate the Agreement to Sell and Purchase by that date. An additional non-refundable earnest money in the amount of \$300,000.00 was to be paid by

MidAmerican to the title company on or before January 8, 2008 which were to be paid to Defendants after certain conditions occurred pursuant to the terms of the Agreement. The dates and times were later modified. Nowhere in the Agreement did it provide that any earnest monies would be paid to Knipe Land under any circumstances.

12. On October 21, 2007, Robertsons and MidAmerican entered into an Agreement to Sell and Purchase that separated out the Robertson portion of the Agreement entered into on September 24, 2007 so that the sale of Robertsons' real property to MidAmerican was separate from the sale of the Robertson Kennels sale of its real property to MidAmerican. The October 21, 2007 Agreement to Sell and Purchase entered into between Robertson and MidAmerican specifically stated that all earnest monies paid by MidAmerican were non-refundable and were to be paid to Robertsons. Nowhere in the October 21, 2007 Agreement to Sell and Purchase that was entered into between Robertsons and MidAmerican did it provide any of the earnest monies paid by MidAmerican would be paid to Knipe Land under any circumstances. Further, Third Party Defendant, John Knipe, as well as MidAmerican's broker signed the October 21, 2007 Agreement to Sell and Purchase that was entered into between Robertsons and MidAmerican.

13. On October 21, 2007, Robertson Kennels and MidAmerican entered into an Agreement to Sell and Purchase that separated out the Robertson Kennels portion of the Agreement entered into on September 24, 2007 so that the sale of Robertson Kennels' real property to MidAmerican was separate from the sale of the Robertsons sale of its real property to MidAmerican. The October 21, 2007 Agreement to Sell and Purchase entered into between Robertson Kennels and MidAmerican specifically stated that all

earnest monies paid by MidAmerican were non-refundable and were to be paid to Robertson Kennels. Nowhere in the October 21, 2007 Agreement to Sell and Purchase that was entered into between Robertson Kennels and MidAmerican did it provide any of the earnest monies paid by MidAmerican would be paid to Knipe Land under any circumstances. Further, Third Party Defendant, John Knipe, as well as MidAmerican's broker signed the October 21, 2007 Agreement to Sell and Purchase that was entered into between Robertson Kennels and MidAmerican.

14. MidAmerican paid to Robertsons earnest monies in the amount of \$225,000.00 through First American Title Company of Idaho.

15. MidAmerican paid Robertson Kennels earnest monies in the amount of \$225,000.00 through First American Title Company of Idaho.

16. Third Party Defendant, John Knipe, on behalf of Knipe Land signed authorizations for First American Title Company of Idaho to release the earnest monies paid to Defendant totaling \$450,000.00, with Knipe Land receiving 5% of the \$450,000.00 as their agreed commission if the Defendants closed on the sale of their real property to MidAmerican.

17. On January 25, 2008, MidAmerican terminated the Agreements to Sell and Purchase it had entered into with Defendants.

18. On February 11, 2008, Plaintiff, Richard Robertson, on behalf of Robertsons and Robertson Kennels, sent an email to Knipe Land through its agent, Rowena Strain, requesting that the \$22,500.00 retained by Knipe Land from the earnest money paid to Defendants be returned to them because the sale of the real property owned by Defendants to MidAmerican fell through.

19. On February 19, 2008, Third Party Defendant, John Knipe, sent a letter to Robertson requesting one-half of the \$450,000.00 paid by MidAmerican less the \$22,500.00 Knipe Land had retained.

20. On April 2, 2008, Knipe Land, through its attorney, demanded payment of the \$202,500.00 from Defendants and also demanded \$17,500.00 from Robertsons relating to the Harmon transaction that was cancelled. This was the first time anyone on behalf of Knipe Land had requested any portion of the monies paid by Harmons despite the fact that the Harmon transaction had been terminated on August 16, 2006 and \$15,000.00 in earnest money had been returned to the Harmons.

21. That Knipe Land did not hold the \$22,500.00 in funds it received on behalf of Defendants in a trust account, but instead chose to spend the money.

22. For the purposes of Defendant's Motion for Partial Summary Judgment only, it can be assumed by the Court that the 2005 Employment Contract and the 2007 Employment Contract had not expired at the time the MidAmerican Agreement to Sell and Purchase were entered into by Defendants and that the listing commission to be received by Knipe Land if the sale was consummated with MidAmerican was 5%. [In fact, there is an issue as to whether the 2005 and 2007 Employment Contracts were renewed, however, so as to avoid an issue of fact, it is assumed for summary judgment purposes only that they were renewed with the listing commission changed to 5%.]

ARGUMENT

I.

STANDARD OF REVIEW

In Peterson v. Shore, Docket No. 34568, 2008 Opinion No. 94 (Idaho App., November 3, 2008), the Idaho Court of Appeals set forth the standard of review for summary judgment as follows:

Summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986). When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders*, 125 Idaho at 874, 876 P.2d at 156.

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an

essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citations omitted). The language and reasoning of *Celotex* has been adopted in Idaho. *Dunnick*, 126 Idaho at 312, 882 P.2d at 479.

2008 Opinion No. 94 at pp. 3 – 4.

In this action, Knipe Land cannot establish essential elements of its case in several respects, both factually and as a matter of law, and therefore, Defendants are entitled to summary judgment on all claims brought by Knipe Land. Further, Defendants are entitled to summary judgment on their tortious conversion claim.

II.

PURSUANT TO THE IDAHO REAL ESTATE LICENSE LAW, IDAHO CODE § 54-2001 et seq., KNIPE LAND CANNOT MAINTAIN AN ACTION TO SEEK A PORTION OF THE EARNST MONIES PAID TO DEFENDANTS BASED UPON THE 2005 EMPLOYMENT CONTRACT AND/OR THE 2007 EMPLOYMENT CONTRACT.

- A. Pursuant to Idaho Real Estate License Law, the division of earnest monies as forfeited payment should a transaction not close are governed by purchase and sale agreements.

Idaho Code § 54-2001 et seq. known as Idaho Real Estate License Law was codified in year 2000 from Senate Bill S1312. The Statement of Purpose for Senate Bill S1312 is as follows:

STATEMENT OF PURPOSE

RS09402C1

This is a comprehensive re-codification of Idaho Real Estate License law, Chapter 20, Title 54. No significant substantive changes are included.

Rather, this legislation responds to chronic and widespread complaint that the existing statute is difficult to use or understand and that its requirements are unclear. The present license law was drafted in 1947 and has been amended some twenty times. This proposal will make the chapter more readable and “user-friendly” by reorganization, by adding badly needed definitions, and by re-working existing sections to clarify the statute’s requirements. Also, the proposed legislation will move many of the Commission’s rules into law, making the statute the primary source to which the public may turn to discover the governing law. (Emphasis added).

55th Idaho Legislature (2nd Session 2000).

Idaho Code § 54-2002 provides in part:

54-2002. Licensure required. -

* * *

Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter. (Emphasis added).

Knipe Land is clearly subject to Idaho Real Estate License Law. Idaho Code § 54-2051 provides in part:

54-2051. Offers to purchase. – (1) A broker or sales associate shall, as promptly as practicable, tender to the seller every written offer to purchase obtained on the real estate involved, up until time of closing. A purchase and sale agreement signed by the prospective buyer shall be deemed in all respects an offer to purchase.

* * *

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

* * *

- (e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;
- (f) All appropriate signatures; and . . .

In regard to both the Harmon Purchase and Sale Agreement and the MidAmerican Agreements to Sell and Purchase, no earnest monies were forfeited. That issue will be dealt with below. With regard to the MidAmerican Agreements to Sell and Purchase, it is specifically provided that Robertsons and Robertson Kennels, respectively, were to receive all earnest monies. Nowhere in the MidAmerican Agreements to Sell and Purchase does it provide that Knipe Land would be entitled to any portion of the earnest monies paid by MidAmerican. Knipe Land does not dispute this fact. Regardless of the specific provisions regarding disbursement of the earnest monies in the MidAmerican Agreements to Sell and Purchase Agreements, Knipe Land argues as follows:

Idaho Code § 54-2051(4) applies to “offers to purchase real property,” such as MidAmerican’s. It would be remarkable, indeed, if an otherwise enforceable contract between a broker and its client could be invalidated by a subsequent contract that the broker was not a party to and had no say in drafting. The statute does not hint, let alone plainly say, that any such dire consequence should follow the omission of a provision for the division of earnest money from a purchase offer received from and written by a third-party prospective buyer. (Footnotes omitted).

(Memorandum in Support of Plaintiff Knipe Land Company’s Motion for Partial Summary Judgment dated December 17, 2008, hereinafter “Plaintiff’s Memorandum,” p.

21. First, Knipe Land did sign the MidAmerican Agreements to Sell and Purchase.

(Affidavit of Eric Bjorkman dated September 16, 2008, Exhibits A, B, C & D).

Regardless, Idaho Code § 54-2051 specifically provides it was Knipe Land’s obligation to see that earnest monies were provided for in the Agreements to Sell and Purchase regardless of who drafted them.

Knipe Land further ignores Idaho Code §§ 54-2046 and 2047. Idaho Code § 54-2046 specifically provides in part:

54-2046. Trust account disbursements. – The broker who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker to discipline.

* * *

(5) Provision for forfeited earnest money. The purchase and sale agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

Idaho Code § 54-2047 provides in part:

54-2047. Disputed earnest money. – (1) any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall:

- (a) Notify each party, in writing, of the demand of the other party; and
- (b) Keep all parties to the transaction informed of any actions by the broker regarding the disputed funds or other consideration, including retention of the funds by the broker until the dispute is properly resolved.

(2) The broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine how to disburse the disputed money and may, at the broker's own discretion, make such disbursement. Discretionary disbursement by the broker based on a reasonable review of the known facts is not a violation of license law, but may subject the broker to civil liability.

In the case of both the Harmon Purchase and Sale Agreement and the MidAmerican Agreements to Sell and Purchase, there clearly was no dispute as Knipe Land personally wrote a check to Robertsons for the Harmon earnest money out of Knipe Land's trust account and in the case of MidAmerican, personally signed authorization directing First American Title Company of Idaho to disburse all earnest monies from their trust account for which Knipe Land was responsible for pursuant to Idaho Code § 54-2041 to

Robertsons and Robertson Kennels (except for 5% which Knipe Land wanted withheld in anticipation of receiving a commission of 5% upon closing).

Based upon the above argument, the 2005 and 2007 Employment Contracts are irrelevant as to the division of earnest monies, as the purchase and sale agreements control disbursement. In the case of the earnest monies paid by MidAmerican, Robertsons and Robertson Kennels are entitled to summary judgment as a matter of law as those monies were to be specifically disbursed to Robertsons and Robertson Kennels pursuant to the Agreements to Sell and Purchase.

- B. Pursuant to Idaho Real Estate License Law, Knipe Land cannot enforce either the 2005 employment contract and/or the 2007 employment contract pursuant to the statute of frauds.

Idaho Code § 54-2050 provides in part:

54-2050. Brokerage representation agreements – Required elements. – All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

- (a) Conspicuous and definite beginning and expiration dates;
- (b) A legally enforceable description of the property;
- (c) Price and terms;
- (d) All fees or commissions; and
- (e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

* * *

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct.

In Garner v. Bartschi, 139 Idaho 430, 80 P.3d 1031 (2003), the Idaho Supreme Court upheld a lower court's decision that refused to enforce a Brokerage Representation Agreement between a real estate broker and its client holding:

In the Representation Agreement, the property is addressed as "4565 Nounan Road, *County* Bear Lake, *City* Nounan, *Zip* 83254, *Legal description* approx. 500 acres mountain property." This description was found by the district court to be insufficient to meet the statutory requirement of I.C. § 54-2050(1)(b).

Idaho code § 54-2050(1)(b) requires real estate brokerage representation agreements to be in writing and to contain a "legally enforceable description of the property." There was no apparent misunderstanding between the Bartschis and Flinders Realty as to which property was being sold. When a discussion ensued over the description of the property, Ms. Bartschi provided the tax notices and a map highlighting the property to Flinders Realty. Flinders Realty knew of the location of the property, was shown the property by Don Bartschi and his son, Jeff, on two different occasions and the boundaries of the parcel had been pointed out.

However, the property description in the Representation Agreement contains only the home address of the Bartschis and the approximate acreage being sold. There is no reference in the Representation Agreement to the tax notices or map. This description is even more vague than the description contained in the Real Estate Purchase and Sale Agreement and therefore is also inadequate.

This Court holds that the property description contained in the Brokerage Representation Agreement between the Bartschis and Flinders Realty is not a "legally enforceable description of the property" as required by I.C. § 54-2050(1)(b) and I.C. § 9-503.

139 Idaho at 437.

In this action, neither the 2005 Employment Contract and/or the 2007 Employment Contract entered into between Knipe Land and Robertsons; and Knipe Land and Robertson Kennels contain a legally enforceable description of the property to be sold. Knipe Land, in its Plaintiff's Memorandum, citing from the Affidavit of Rowena Strain in Support of Plaintiff, Knipe Land Company's Motion for Partial Summary

Judgment dated December 17, 2008 states that legal descriptions were attached to both the 2005 Employment Contract and the 2007 Employment Contract by Rowena Strain and John Knipe with a paper clip, although she is vague as to when this was done. By submitting this Affidavit, Knipe Land appears to be attempting to create a fraud on the court for the following reasons:

1. In Knipe Land's Complaint in this action filed on April 16, 2008, Knipe Land alleges in part as follows:

5. Or about September 1, 2005, Plaintiff and the Robertsons entered into an "Employment Contract" ("the 2005 Employment Contract") whereby the Robertsons granted Plaintiff an exclusive listing to sell the Robertsons' Property under the terms set forth therein. A copy of the 2005 Employment contract is attached hereto as Exhibit A and made a part hereof by this reference. (Emphasis added).

6. On or about February 6, 2007, the Robertsons and Robertsons Kennels entered into an "Employment Contract" ("the 2007 Employment Contract") whereby they granted Plaintiff an exclusive listing to sell the Kennels' Property under the terms set forth therein. A copy of the 2007 Employment Contract is attached hereto as Exhibit B and made a part hereof by this reference. (Emphasis added).

(Complaint, pp. 2 - 3). True and correct copies of the 2005 and 2007 Employment Contracts attached to Knipe Land's Complaint as Exhibits "A" and "B" are attached hereto as Appendix 1 and Appendix 2, respectively. Neither contains a legal description.

2. On June 3, 2008, Knipe Land caused "Plaintiff's First Set of Request for Admission to Defendants" to be served on Robertsons and Robertson Kennels. Request for Admissions 1 and 2 were as follows:

REQUEST FOR ADMISSION NO. 1: Admit that the Robertsons executed the 2005 Employment Contract attached hereto as Exhibit A.

REQUEST FOR ADMISSION NO. 2: Admit that Robertson Kennels executed the 2007 Employment Contract attached hereto as Exhibit B.

(Plaintiff's First Set of Requests for Admission to Defendants dated June 3, 2008, p. 2).

True and correct copies of the 2005 and 2007 Employment Contracts attached to the Requests for Admission as Exhibits "A" and "B" are attached hereto as Appendix 1 and 2, respectively. Neither contains a legal description. Robertsons have admitted executing the Employment Contract attached as Exhibit "A" and Robertson Kennels has admitted executing the Employment Contract attached hereto as Exhibit "B."

3. The 2005 Employment Contract attached hereto as Appendix 1 states in the first sentence . . . described as . . . "Broker may attach legal prior to closing." Clearly this provision would not have been put in if a legal description had been attached. Further, both the 2005 and 2007 Employment Contracts refer to an "Exhibit A" in which a legal description is contained. Neither Employment Contract has an Exhibit "A" attached.

4. On July 17, 2008, Robertsons and Robertson Kennels filed their Answer, Counterclaim and Third Party Complaint and Demand for Jury Trial setting forth Affirmative Defenses which include the following:

FIRST AFFIRMATIVE DEFENSE

Plaintiff and Defendants have never entered into a Brokerage Representation Agreement ("Employment Contract") that is enforceable pursuant to Idaho Code § 54-2050.

SECOND AFFIRMATIVE DEFENSE

Any alleged "Employment Contract" entered into by Defendants with Plaintiff is unenforceable pursuant to Idaho's statute of frauds. (Answer, Counterclaim and Third Party Complaint and Demand for Jury Trial, p. 3).

Robertsons and Robertson Kennels also brought a Counterclaim and Third Party Complaint against Knipe Land and Third Party Defendant, John Knipe, hereinafter "Knipe" pursuant to the Idaho Consumer Protection Act in part, on the grounds no legal descriptions were made a part of the Employment Contracts.

Now magically, Knipe Land files an Affidavit that states legal descriptions were "paper clipped" to the 2005 and 2007 Employment Contracts. Such an assertion not only defies credibility, but also seeks to unilaterally amend Knipe Land's Complaint as the Employment Contracts were incorporated into the Complaint. Further, Knipe Land's Request for Admissions dated June 3, 2008 identify and adjudicate the 2005 and 2007 Employment Contracts in this action. There should be no further issue in that regard.

In Plaintiff's Memorandum, Knipe Land argues that Idaho Code § 54-2050(1) conflicts with Idaho Code § 9-508 arguing:

Holding that Idaho Code § 54-2050(1) grants a private party a defense to a contract that does not satisfy its five criteria also creates a conflict with the statute of frauds for "real estate commission contracts." Idaho Code § 9-508. both statutes require a written listing agreement signed by the landowner, but the former requires additional information to be part of the same agreement. Thus, a single agreement might be entirely valid under Idaho Code § 9-508 but completely invalid under Idaho Code § 54-2050(1) – which is just what will Defendants argue for in this case. (Footnotes omitted).

Plaintiff's Memorandum, p. 20. Knipe Land then goes on to argue rules of statutory construction in order to determine which statute controls. Knipe Land ignores Idaho Code § 54-2095 which explicitly states:

54-2095. Conflicts with other law. – If the provisions of this act are found to be in conflict with any other provision of Idaho law, the provisions of this act shall control.

As such, with regard to any differences between Idaho Code § 9-508 and Idaho Code § 54-2050(1), the Idaho legislature has explicitly provided Idaho Code § 54-2050(1) controls. Idaho Code § 54-2050(1) is clearly more explicit as to the requirement of an enforceable legal description.

The 2005 and 2007 Employment Contracts clearly do not meet the requirements of Idaho Code § 54-2050 and therefore, are unenforceable. As such, Robertsons and Robertson Kennels are entitled to summary judgment.

C. Knipe Land cannot enforce contracts that violate Idaho Code § 54-2001 et seq.

Knipe Land argues that it can break the law (e.g. Idaho Real Estate License Law, Idaho Code § 54-2001 et seq.) in entering into a brokerage representation agreement with Robertsons and Robertson Kennels and yet, can still enforce an otherwise illegal contract. Knipe Land argues:

Idaho Code § 54-2050 is a regulatory statute that is to be enforced by the Real Estate Commission. Defendants cannot distill a private right of action from it to escape their contractual obligations. Idaho Code § 54-2085(5) specifies that “[t]he failure of a licensee to . . . obtain any written agreement . . . required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.” (Emphasis added.) It says nothing about the private contractual rights of the broker and the client *inter sese*. Under Idaho Code §§ 54-2005 and 54-2007 it is the Idaho Real Estate Commission that has responsibility for “administering and enforcing all provisions of this chapter.”

Plaintiff’s Memorandum, pp. 18 – 19. Knipe Land goes on to argue:

If Plaintiff did not adhere to Idaho Code § 54-2050(1), then it is the office of the Real Estate Commission to consider disciplinary action. It is

not a ground for Defendants to keep \$242,500 they had contractually agreed would be Plaintiff's.

(Plaintiff's Memorandum, p. 20). In fact, Knipe Land also did not comply with Idaho Code § 54-2051(4)(e) in order to receive a portion of any earnest monies. Idaho Code § 54-2051(4)(e) provides:

54-2051. Offers to purchase. -

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

* * *

(e) A provision for division of earnest money retained by any person as forfeited payment should be the transaction not close; (Emphasis added).

Clearly, Knipe Land would fall under the category "any person." With regard to MidAmerican, it is clear and explicit in the Agreements to Sell and Purchase that Robertsons and Robertson Kennels were to receive all earnest monies. It is further clear in the Agreements to Sell and Purchase that Knipe Land was not to retain any of the earnest monies. The same is true as to the \$35,000.00 Robertsons received from Harmons.

In making its arguments, Knipe Land clearly ignores the following language in Idaho Code § 54-2002 which states in part:

54-2002. Licensure required. -

* * *

Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter. (Emphasis added).

Knipe Land further ignores the fact that contracts that violate statutory requirements are void. In Trees v. Kersey, 138 Idaho 3, 56 P.3d 765 (2002), the Idaho Supreme Court held:

The general rule is that a contract prohibited by law is illegal and unenforceable. *Id.*; *Williams v. Cont'l Life & Acc. Co.*, 100 Idaho 71, 73, 593 P.2d 708, 710 (1979); *Whitney v. Cont'l Life and Acc. Co.*, 89 Idaho 96, 105, 403 P.2d 573, 579 (1964). A contract "which is made for the purpose of furthering any matter or thing prohibited by statute ... is void." *Kunz v. Lobo Lodge, Inc.*, 133 Idaho 608, 611, 990 P.2d 1219, 1222 (Ct. App. 1999) (quoting *Porter v. Canyon County Farmers' Mut. Fire Ins. Co.*, 45 Idaho 522, 525, 263 P. 632, 633 (1928)). This rule applies on the ground of public policy to every contract which is founded on a transaction prohibited by statute. *Id.* (citing *Porter*, 45 Idaho at 525, 263 P. 632, 633 (1928) (citations omitted)). The Idaho Court of Appeals has suggested that "where a statute intends to prohibit an act, it must be held that its violation is illegal, without regard to the reason of the inhibition ... or to the ignorance of the parties as to the prohibiting statute." *Id.* (quoting 17A Am.Jur2d *Contracts* § 251(1991)). (Emphasis added).

138 Idaho at 6 – 7. In Miller v. Haller, 129 Idaho 345, 924 P.2d 607 (1996), the Idaho Supreme Court, in determining whether a physician referral contract was illegal, held:

The general rule is that a contract prohibited by law is illegal and hence unenforceable. *Williams v. Continental Life & Accident Co.*, 100 Idaho 71, 73, 593 P.2d 708, 710 (1979). This same rule applies equally to contracts that are violative of public policy. *Smith v. Idaho St. Univ. Fed. Credit Union*, 114 Idaho 680, 684, 760 P.2d 19, 23 (1988) (citing *Quintana v. Anthony*, 109 Idaho 977, 981, 712 P.2d 678, 682 (Ct. App. 1985)). The question in this case is whether an oral agreement whereby one physician agrees to refer patients to another physician in exchange for an agreement by the latter physician to leave an existing partnership with the former physician is either illegal or against public policy, as a matter of law.

The practice of medicine is a privilege granted by the state of Idaho, which retains the authority to license and regulate physicians practicing in this state in order to assure the public health of the citizenry. I.C. § 54-1802. Pursuant to that authority, the Idaho Code provides the state board of medicine with specific grounds for disciplining a licensed physician, which includes:

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.

I.C. § 54-1814.

* * *

As the court in *Beck* noted, the evil to be avoided in such agreements is “ ‘any relationship where the referral may be induced by considerations other than the best interests of the patient.’ ” *Beck*, 260 Cal.Rptr. at 243 (quoting 63 Ops. Cal. Atty. Gen. 89, 92 (1980)).

129 Idaho at 351 – 352.

Like the practice of medicine, the occupation of being a real estate broker is a privilege granted by the state of Idaho, which retains the authority to license and regulate real estate brokers working in the state of Idaho to protect persons engaged in real estate transactions in this state when they are represented by a real estate broker. In so regulating real estate brokers, Idaho has enacted the Idaho Real Estate License Law, Idaho Code § 54-2001 et seq. which real estate brokers are required to comply with when representing clients. Idaho Code § 54-2050(1)(B) is very specific and does not leave room for interpretation. A real estate brokerage representation agreement must contain certain contract provisions including . . . a legally enforceable description of the property. Neither the 2005 Employment Contract or the 2007 Employment Contract contained a legally enforceable description of the property that was the subject of the contracts. As such, the contracts are void.

Further, Idaho Code § 54-2051(4)(e) is also very specific and not subject to interpretation providing:

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

* * *

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

Knipe Land had a specific statutory duty to make sure that the purchase and sale agreements between Robertsons and Harmons and the Agreements to Sell and Purchase between Robertsons / Robertson Kennels and MidAmerica were specific. In the case of the Harmon Purchase and Sale Agreement, Robertsons were to receive a non-refundable earnest money in consideration for extending Harmons' time for closing on the purchase of Robertsons' property. Even if Harmons did not default, Robertsons were to receive those funds. In the case of the MidAmerican Agreements to Sell and Purchase, Robertsons and Robertson Kennels were to receive the non-refundable earnest monies totaling \$450,000.00. Nowhere in the Agreements to Sell and Purchase did it state Knipe Land would be entitled to any portion of the earnest monies. Knipe Land is now requesting the court to ignore Idaho Code § 54-2051 and award it a portion of the earnest monies. Clearly, Idaho Code § 54-2051 is a regulatory statute designed to protect clients of real estate brokers such as Robertsons and Robertson Kennels. The evil at Idaho Code § 54-2051 is designed to protect in keeping real estate clients from entering into real estate agreements to sell their property without knowing exactly what the real estate broker will receive should the buyer not consummate the transaction.

III.

THE 2005 AND 2007 EMPLOYMENT CONTRACTS DO NOT PROVIDE THAT KNIPE LAND WILL RECEIVE ANY OF THE EARNEST MONIES PAID BY HARMON AND/OR MIDAMERICAN.

For the sake of argument only, even if the 2005 and 2007 Employment Contracts were valid, they do not provide that Knipe Land would receive any of the earnest monies from either the Harmon transaction or the MidAmerican transaction.

Knipe Land relies on the following language contained in both the 2005 and 2007 Employment Contracts to support its position that it is entitled to one-half of the earnest monies paid by Harmons and MidAmerican:

Should a deposit or amounts paid on account of purchase be forfeited, one half thereof may be retained by you, as the Broker, as the balance shall be paid to me. (Emphasis added).

- A. The language contained in both the 2005 Employment Contract and the 2007 Employment Contract is unambiguous in that Knipe Land would only receive a portion of any earnest monies in case of a forfeiture by a purchaser and if a subsequent agreement allowed Knipe Land to receive earnest monies.

In Intermountain Eye and Laser Centers, PLLC v. Miller, 142 Idaho 218, 127

P.3d 121 (2005), the Idaho Supreme Court held:

With regard to the matter of contract interpretation, *Shawver* provides the following guidance:

When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law. *State v. Barnett*, 133 Idaho 231, 234, 985 P.2d 111, 114 (1999). An unambiguous contract will be given its plain meaning. *Id.* The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered. *Opportunity, L.L.C. v. Ossewarde*, 136 Idaho 602, 607, 38 P.3d 1258, 1263 (2002) (citing *Rutter v. McLaughlin*, 101 Idaho 292, 612 P.2d 135 (1980)). In determining the intent of the parties, this Court must view the contract as a whole. *Daugharty v. Post Falls Highway Dist.*, 134 Idaho 731, 735, 9 P.3d 534, 538 (2000). If a contract is found ambiguous, its interpretation is a question of fact. *Id.* (citing *Electrical Wholesale Supply Co. Inc. v. Nielson*, 136 Idaho 814, 823, 41 P.3d 242, 251 (2001)). Whether a contract is ambiguous is a question of law. *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 13, 43 P.3d 768, 772 (2002) (citing *Terteling v. Payne*, 131 Idaho 389, 391-92, 957 P.2d 1327, 1389-90 (1998).

140 Idaho at 361, 93 P.3d at 692.

142 Idaho at 222 – 223. In this action the 2005 and 2007 Employment Contracts both require that a purchaser forfeit any earnest monies paid or account of purchase before Knipe may be entitled to retain them. In this action, neither Harmon or MidAmerican forfeited any earnest monies. Black's Law Dictionary defines forfeit as follows:

Forfeit /fórfæt/. To lose, or lose the right to, by some error, fault, offense, or crime; or to subject as property, to forfeiture or confiscation. To lose, in consequence of breach of contract, neglect of duty, or offense, some right, privilege, or property to another or to the State. To incur a penalty; to become liable to the payment of a sum of money, as the consequence of a certain act.

To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, or omission. It is a deprivation (that is, against the will of the losing party), with the property either transferred to another or resumed by the original grantor.

Black's Law Dictionary 332 (5th ed. 1983).

With regard to the Real Estate Purchase and Sale Agreement entered into between Robertsons and Harmons, the original purchase price was for \$2,475,000.00 with the closing of the sale being contingent upon Harmons being able to sell certain real property they owned in Eagle, Idaho on or before February 15, 2006. (See Appendix 3). Harmons were unable to sell their Eagle, Idaho property by February 15, 2006 so Robertsons agreed to extend the closing until May 15, 2006 so long as Harmons paid \$25,000.00 to Robertsons which was non-refundable. The sales price was also increased to \$2,500,000.00 with the \$25,000.00 being credited toward the sales price at closing. (See Appendix 4). Harmons paid \$25,000.00 into Knipe Land's trust account and Knipe Land in turn paid a check to Robertsons from Knipe Land's trust account in the amount of \$25,000.00. (See Appendix 5). Harmons were unable to sell their Eagle, Idaho property prior to May 15, 2006 and Robertsons agreed to extend the closing until August 15, 2006

with the payment by Harmons of an additional \$10,000.00 which was non-refundable. Harmons caused an additional \$10,000.00 to be paid into Knipe Land's trust account. Knipe Land in turn paid a check to Robertsons from Knipe Land's trust account in the amount of \$10,000.00. (See Appendix 6). Harmons were unable to sell their Eagle, Idaho property by August 15, 2006 so the original Real Estate Purchase and Sale Agreement entered into between Harmons and Robertsons was terminated and the remaining \$15,000.00 of the \$50,000.00 paid by Harmons as earnest money was returned to them. (See Appendix 7).

Harmons did not default under the terms of the Real Estate Purchase and Sale Agreement they entered into with Robertsons as their contingency was never met. Further, they did not forfeit \$35,000.00 to Robertsons. The \$35,000.00 was paid in consideration for Robertsons giving Harmons two (2) three (3) month extensions on which to close. As such, there was no forfeiture under the 2005 Employment Contract, nor was there a default by the Harmons under the Real Estate Purchase and Sale Agreement they entered into with Robertsons. As such, Knipe Land is not entitled to any portion of the \$35,000.00 Harmons paid to Robertsons in consideration of the extensions.

With regard to the Agreements to Sell and Purchase entered into by Robertsons and Robertsons Kennels with MidAmerican, Robertsons and Robertson Kennels received the \$450,000.00 in non-refundable earnest money in consideration for MidAmerican having significant access to the real property that was the subject of the Agreements to Sell and Purchase. Paragraph 8(I) of the Agreements to Sell and Purchase provided as follows:

- I) **DUE DILIGENCE ACCESS:** Immediately following the signing of this document by All Parties, in addition to the access granted

pursuant to that certain Agreement to Sell and Purchase (Including Earnest Money Receipt) dated September 24, 2007 entered into between the Parties, Buyer shall be granted access to the Ranch to perform certain tests and analysis of the Property to measure whether subject property is suitable for it's needs. Tests shall include, but not be limited to:

- 1) Core drilling
- 2) Soil sampling
- 3) Site assessments by teams of technicians
- 4) Surveying.

Buyer shall be held responsible for the actions of its employees and contractors in this regard, as well as any reclamation necessary to "put back" disturbed areas. Additionally Buyer and its evaluation team and contractors shall use "best efforts" to minimize risk for fire and intrusions upon Seller's hunting and dog training business.

(Sec Affidavit of Eric Bjorkman). MidAmerican's access to the subject real property coincided with the moment they paid the initial non-refundable earnest monies in the amount of \$150,000.00. From September 24, 2007 until MidAmerican determined they were not going to proceed with the purchase, MidAmerican significantly impacted the use and enjoyment of Robertsons and Robertson Kennels' real property with heavy equipment, drilling rigs, numerous personnel who were on the property during all daylight hours, etc. Towers were erected on the property, roads were cut, pastures torn up, etc. Further, Robertsons conducted guided bird hunts on the property from the time bird season opened in mid September until it closed in late January, which were severely impacted. Further, Robertsons spent considerable time and effort "guiding" MidAmerican around the property to aid them in their testing, etc. Robertsons were also subject to considerable public scrutiny and outcry because their real property was being considered as a site for a nuclear power plant. For Knipe Land to argue that MidAmerican forfeited \$450,000.00 is ludicrous. The \$450,000.00 was paid in

consideration of the above intrusions and inconveniences caused to Robertsons and Robertson Kennels, as well as the loss of use and enjoyment of their real property.

Knipe Land argues that the earnest monies paid by MidAmerican were “liquidated damages” pursuant to the terms of paragraph 16 of the Agreements to Sell and Purchase. (Plaintiff’s Memorandum p. 11). Paragraph 16 of the Agreements to Sell and Purchase entered into between Defendants and MidAmerican provides:

SELLER’S REMEDIES: If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period in this Agreement, subject to the representations, conditions and contingencies set forth in Section 8, the Seller may: 1) declare the Earnest Money paid by Buyer be forfeited; or 2) demand that Buyer pay monetary damages for Buyer’s failure to perform the terms of this Agreement which shall be limited to the Earnest Money deposit, or 3) demand that Buyer specifically perform Buyer’s obligation under this Agreement. (Emphasis added).

Knipe Land ignores two (2) very important facts. First, MidAmerican terminated the contract pursuant to paragraph 8 of the Agreements to Sell and Purchase, so Defendants had no remedies as MidAmerican did not breach the Agreements to Sell and Purchase. Second, there were no earnest monies to be forfeited by MidAmerican as the earnest monies paid to Defendants were non-refundable and were already paid to Defendants. Therefore, Knipe Land’s arguments have no merit pursuant to the explicit contractual provisions contained in the Agreements to Sell and Purchase.

B. The provisions relied on by Knipe Land also contained the contingent words “may be retained by you.”

For the sake of argument only, even if a buyer forfeits its earnest money under the terms of the 2005 and 2007 Employment Contracts, Knipe Land would not be entitled to any portion of the earnest monies without a subsequent agreement by the seller. Black’s Law dictionary defines the term “may” in part as follows:

May. An auxiliary verb qualifying the meaning of another verb ...

* * *

... [A]s a general rule, the word “may” will not be treated as a word of command unless there is something in context or subject matter of act to indicate that it was used in such sense. In construction of statutes and presumably also in construction of federal rules word “may” as opposed to “shall” is indicative of discretion or choice between two or more alternatives, but context in which word appears must be controlling factor. (Emphasis added).

Black’s Law Dictionary, 506 (5th ed. 1983). In Selkirk Seed Company v. Formey, 134 Idaho 98, 996 P.2d 798 (2000), the Idaho Supreme Court held:

This Court has held that the use of the permissive word “may” denotes the exercise of discretion. See *Walborn v. Walborn*, 120 Idaho 494, 501, 817 P.2d 160, 167 (1991). Given the permissive language of the rule, the district court’s decision to grant a protective order is discretionary and will not be overturned absent an abuse of that discretion. (Emphasis added).

134 Idaho at 104. In Walborn v. Walborn, 120 Idaho 494, 817 P.2d 160 (1991), the Idaho Supreme Court held:

Our cases have held that the use of the word “may” rather than the word “shall” denotes discretion. *Saxton v. Gem County*, 113 Idaho 929, 750 P.2d 950 (1988); *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983); *State v. Bunting Tractor*, 58 Idaho 617, 77 P.2d 464 (1938); *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989) (Where a statute used the language “may be foreclosed by advertisement and sale ...,” the court held that, “If the statute was intended to provide exclusive remedies, it would have used mandatory ‘shall’ language rather than the permissive ‘may.’”); *State v. Aubert*, 119 Idaho 868, 811 P.2d 44 (Ct. App. 1991) (“... this statute creates a permissive option (‘may ... request’ ...”). The foregoing cases amply demonstrate that the use of the phrase “may be modified” by the legislature, rather than word “shall,” indicates that the trial court is to have discretion in determining whether to modify prior to decrees.

120 Idaho at 500 – 501. As such, the 2005 and 2007 Employment Contracts required Knipe Land to do something more to be entitled to receive any portion of any “forfeited” earnest monies. Given the explicit requirements of Idaho Code § 54-2051(4), Knipe

Land would have had to have placed a provision in the Agreements to Sell and Purchase in order to have been entitled to a portion of the earnest monies and the purchaser and Defendants would have had to agree to that provision. That did not occur and as such, Defendants are entitled to summary judgment as to the earnest monies.

IV.

KNIFE LAND WAIVED ANY ENTITLEMENT IT MAY HAVE HAD TO A PORTION OF THE EARNEST MONIES.

Again, for the sake of argument only, if Knife Land were entitled to a portion of the earnest monies relating to both the Harmon and MidAmerican transactions, Knife Land waived their entitlement. In Record Steel & Construction, Inc. v. Martel Construction, Inc., 129 Idaho 288, 923 P.2d 995 (App. 1996), the Idaho Court of Appeals held:

A waiver is a voluntary and intentional relinquishment of a known right or advantage. *Frontier Fed. Sav. & Loan v. Douglass*, 123 Idaho 808, 812, 853 P.2d 553, 557 (1993), *cert. denied*, 510 U.S. 917, 114 S.Ct. 309, 126 L.Ed.2d 257 (1993); *Margaret H. Wayne Trust v. Lipsky*, 123 Idaho 253, 256, 846 P.2d 904, 907 (1993). Waiver will not be inferred; the intent to waive must clearly appear. *Id.*; *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 520, 650 P.2d 657, 662 (1982). The party asserting waiver must show that he acted reasonably in reliance upon it and that he has altered his position to his detriment. *Margaret H. Wayne Trust*, 123 Idaho at 256, 846 P.2d at 907.

129 Idaho at 292. In Abrams v. Porter, 128 Idaho 869, 920 P.2d 386 (1996), the Idaho Supreme Court held:

“In order to establish waiver the intention to waive must clearly appear, although it may be established by conduct.” *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992).

128 Idaho at 873. In this action, Knife Land clearly waived any alleged right it had to a portion of the earnest monies. Knife Land’s conduct clearly establishes a waiver.

A. Knipe Land waived any claim it may have had to earnest monies from the Harmon transaction.

In the case of the Harmon transaction, Knipe Land waived any claim it may have had to the \$35,000.00 in earnest monies by remitting to Robertsons a check in the amount of \$25,000.00 on February 24, 2006 and a check in the amount of \$10,000.00 on May 17, 2006 from the Knipe Land Trust Account. (See Appendix 5 and 6). By remitting the check to Robertsons, Knipe Land admitted there was no dispute as to Robertsons' entitlement to the earnest monies pursuant to Idaho Code § 54-2047(2). Further, by remitting the earnest monies to Robertsons, Robertsons altered their position. First, by accepting the earnest monies, a taxable event occurred and Robertsons were required to pay income tax on the entire \$35,000.00 for tax year 2006 as the \$35,000.00 became income to Robertsons upon receipt. Second, Robertsons, on behalf of Robertson Kennels, entered into the 2007 Employment contract with Knipe Land and ultimately the Agreement to Sell and Purchase with MidAmerican based upon his understanding that Robertsons and/or Robertson Kennels were entitled to 100% of all non-refundable earnest monies based upon Knipe Land's previous course of conduct in their business dealings. It is also significant that Knipe Land did not request any portion of the Harmon earnest monies until after Robertsons requested the \$22,500.00 Knipe Land withheld in the MidAmerican transaction and Knipe Land's attorneys became involved. (See Appendix 9).

B. Knipe Land waived any claim it may have had to the earnest monies from the MidAmerican transaction by the following conduct.

1. Failing to advise Robertsons they were entitled to a portion of the earnest monies relating to the Harmon transaction thereby creating a course of conduct in Knipe

Land's business dealing upon which Robertsons and Robertson kennels relied upon in making decisions when entering in Agreements to Sell and Purchase with MidAmerican.

2. Failing to provide in the Agreements to Sell and Purchase between MidAmerican and Defendants that Knipe Land would receive a portion of the earnest monies in the event of a "forfeiture." By not following the statutory requirements contained in Idaho Code § 54-2051(4), Knipe Land told all parties it would not be receiving any portion of the earnest monies. Further, Robertsons and Robertson Kennels relied on the fact that they would be receiving 100% of the earnest monies paid by MidAmerican when they entered into the Agreements to Sell and Purchase, as they would not have done so had it been set forth that Knipe Land would have received a portion of the earnest monies.

3. Specifically instructing First American Title Company to remit to Robertsons and Robertson Kennels earnest monies totaling \$427,500.00 on September 26, 2007, October 23, 2007 and December 18, 2007, respectively. (See Appendix 8). By doing so, Knipe Land admitted there was no dispute as to Robertsons and Robertson Kennels' entitlement to the earnest monies pursuant to Idaho Code § 54-2047(2). Further, by instructing the title company to remit earnest monies in the amount of \$427,500.00 and Robertsons and Robertson Kennels accepting the earnest monies, a taxable event occurred. As a result, Robertsons and Robertson Kennels were required to pay income tax on the \$427,000.00 for tax year 2007 as the \$427,500.00 became income to Robertsons and Robertson Kennels upon receipt. Clearly, by receiving the \$427,500.00, Robertsons and Robertson Kennels changed the position of their detriment. Further, the balance of the monies after taxes was used by Robertsons and Robertson

Kennels to pay off all debts they owed against the real property that was the subject of the MidAmerican Agreements to Sell and Purchase.

V.

KNIFE LAND'S ARGUMENT THAT IT HAS FULLY PERFORMED THE
2005 AND 2007 EMPLOYMENT CONTRACTS AND THEREFORE
ROBERTSONS AND ROBERTSON KENNELS ARE ESTOPPED FROM
ARGUING THE EMPLOYMENT CONTRACTS ARE UNENFORCEABLE
IS COMPLETELY WITHOUT MERIT.

Knife Land argues in its Plaintiff's Memorandum ... Plaintiff has fully performed the Employment Contracts ... (Plaintiff's Memorandum, p. 20). The 2005 and 2007 Employment Contracts both provide as follows:

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and on the terms noted.

Clearly, Knife Land has not performed its contractual obligations as Knife Land has yet to sell any real property on behalf of Robertsons and/or Robertson Kennels. Therefore, Robertsons and Robertson Kennels are not estopped to argue the 2005 and 2007 Employment Contracts are unenforceable as Knife Land to date has failed to perform either of the contracts. Further, Idaho case law specifically provides that any contract prohibited by law is unenforceable. Trees v. Kersey, 138 Idaho 3, 56 P.3d 765 (2002).

VI.

KNIFE LAND HAS VIOLATED THE IDAHO CONSUMER PROTECTION ACT
AND HAS WRONGFULLY CONVERTED \$22,500.00 THAT BELONGS TO
ROBERTSONS AND/OR ROBERTSON KENNELS.

- A. Knife Land's argument that the Idaho Consumer Protection Act does not apply to this action is without merit.

Knife Land argues that pursuant to Idaho Code § 48-605(1) the Idaho Consumer Protection Act does not apply to this action. Idaho code § 48-605(1) provides:

48-605. Exceptions to chapter. – Nothing in this act shall apply to:

(1) Actions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.

Knipe Land fails to note that its activities in this action are not permitted under the Idaho Real Estate License Law. Idaho Code § 54-2050 specifically provides in part:

54-2050. Brokerage representation agreements – Required elements. – All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

- (a) Conspicuous and definite beginning and expiration dates;
- (b) A legally enforceable description of the property;
- (c) Price and terms;
- (d) All fees or commissions; and
- (e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

* * *

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement; a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct. (Emphasis added).

Idaho Code § 54-2050(1)(b) specifically requires the 2005 and 2007 Employment Contracts to contain a ... “legally enforceable description of the property.” Clearly, neither agreement contained a legally enforceable property description. Idaho Code § 54-2050 specifically required that Knipe Land give Robertsons and Robertson Kennels ... “at the time of securing the agreement ... a true and correct copy thereof ...” This clearly did not happen as well. Rowena Strain, in her Affidavit dated December 17, 2008 states:

9. To the best of my recollection, Mr. Robertson was given copies of both the 2005 Employment Contract and the 2007 Employment Contract at or about the time they were signed. To the best of my recollection, neither of those contracts had blanks for information that were not completed at or about the time Defendants signed each such contract.

(Affidavit of Rowena Strain in Support of Plaintiff Knipe Land Company's Motion for Partial Summary Judgment dated December 17, 2008). Based upon Ms. Strain's own statements in her Affidavit, it would have been impossible for a complete copy of the 2005 Employment Contract and 2007 Employment Contract to have been left with Richard Robertson at the time they were signed as the legal descriptions were not attached. Further, John Knipe, in his Affidavit in Opposition to Defendant's Motion to Change Venue testified:

4. I believe that I was the last person to sign the 2007 Employment Agreement which concerned the portion of Defendants' real property that was held in the name of Robertson Kennels, Inc. To the best of my recollection, I physically signed that Employment Contract on behalf of KLC while I was at my office in Boise, Idaho.

(Affidavit of John Knipe in Opposition to Defendants' Motion to Change Venue dated May 19, 2008). It would be impossible for Rowena Strain to have given a copy of the Employment Contracts to Richard Robertson at the ranch when John Knipe was the last person to sign the contracts while in his office in Boise.

Idaho Code § 54-2002 provides in part:

54-2002. Licensure required. -

* * *

Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter. (Emphasis added).

In Fern v. Noah, 142 Idaho 775, 133 P.3d 1240 (2006), the Idaho Supreme Court held:

The purpose of the ICPA is “to protect both consumers and businesses against unfair methods of competition and unfair and deceptive practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection. I.C. § 48-601; *White*, 140 Idaho at 890, 104 P.3d at 364. The ICPA should be construed liberally. *In re W. Acceptance Corp.*, 117 Idaho 399, 401, 788 P.2d 214, 216 (1990). Idaho Code § 48-603 contains a knowledge element and an enumeration of unfair or deceptive acts or practices in the conduct of trade which our legislature has declared unlawful. The real property at issue is clearly within the definition of “goods.” See I.C. § 48-602(6); see also *White*, 140 Idaho at 890, 104 P.3d at 364.

142 Idaho at 779 – 780. In Edmonds v. John L. Scott Real Estate, Inc., 87 Wash. App.

834, 942 P.2d 1072 (1997), the Washington Court of Appeals held:

Unfair methods of competition and unfair or deceptive acts or practices are unlawful under the CPA. RCW 19.86.020. Actions or transactions within the statutory authority granted to the real estate commission in chapter 18.85 RCW may not be construed to be a violation of the CPA. RCW 19.86.170. Because exceptions to the CPA must be narrowly confined, *Vogt v. Seattle-First National Bank*, 117 Wash.2d 541, 552, 817 P.2d 1364 (1991), in order to fall within this exception, the particular practice found to be unfair or deceptive must be specifically permitted. *Miller v. U.S. Bank of Washington*, 72 Wash. App. 416, 420, 865 P.2d 536 (1994). An action or transaction is not exempt merely because it is regulated generally, *Miller*, 72 Wash. App. At 420, 865 P.2d 536, or merely because a regulating agency acquiesces in it, *Vogt*, 117 Wash.2d at 551-52, 817 P.2d 1364. Rather, the agency must take “ ‘overt affirmative actions specifically to permit the actions or transactions engaged in’ by the person or entity involved in a Consumer Protection Act complaint.” *Vogt*, 117 Wash.2d at 552, 817 P.2d 1364 (quoting *In re Real Estate Brokerage Antitrust Litig.*, 95 Wash.2d 297, 301, 622 P.2d 1185 (1980)). (Emphasis added).

942 P.2d 1077 – 1078. Idaho Code § 48-603 provides in part:

48-603. Unfair methods and practices. – The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

* * *

(12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;

(13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;

* * *

(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in subsection (37) of section 28-41-301, Idaho Code;

The failure of Knipe Land to put an enforceable legal description into the 2005 and 2007 Employment Contracts constitutes having Robertsons and Robertson Kennels signing a contract with a blank space to be filled in after obtaining their signature. Failing to provide Robertsons and Robertson Kennels a copy of the contract they signed at the time they signed it also constitutes a violation under the Idaho Consumer Protection Act. The failure to provide Robertsons and Robertson Kennels a complete copy of the "renewal agreements" is also a violation. Failing to request a portion of the Harmon earnest monies until after obtaining the 2007 Employment Contract constitutes a deceptive practice. Failing to put into the Agreements to Sell and Purchase that Knipe Land would claim a portion of any earnest monies from MidAmerican is also a deceptive practice. As

such, Knipe Land's Motion for Summary Judgment in regard to its violation of the Idaho Consumer Protection Act must be denied.

- B. Knipe Land's keeping of \$22,500.00 in earnest monies paid by MidAmerican constitutes a tortious conversion.

In Gissel v. State, 111 Idaho 725, 727 P.2d 1153 (1986), the Idaho Supreme Court held:

Conversion is "any distinct act of dominion wrongfully exerted over another's personal property in denial or inconsistent with his rights therein, such as a tortious taking of another's chattel, or any wrongful exercise ... over another's goods, depriving him of the possession, permanently or for an indefinite time." *Klam v. Koppel*, 63 Idaho 171, 118 P.2d 729 (1941). Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel. Restatement (Second) of Torts, § 222A, (1965). The state's refusal to account for the money received unlawfully interfered with the Gissels' possessory rights.

111 Idaho at 727. Pursuant to the Agreements to Sell and Purchase entered into by Robertsons and Robertson Kennels with MidAmerican, Robertsons and Robertson Kennels were entitled to 100% of the earnest monies paid by MidAmerican. Five percent (5%) of the earnest monies were entrusted to Knipe Land. Idaho Code § 54-2041 provides in part:

54-2041. Trust accounts and entrusted property. – (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved. (Emphasis added).

Nowhere in the Agreements to Sell and Purchase does it state that Knipe Land was entitled to any portion of the non-refundable earnest monies paid by MidAmerican as is required by Idaho Code § 54-2051(4)(e). As such, Knipe Land was required to deposit those funds upon receipt in a trust account as they were not legally entitled to them. Knipe Land admits to not depositing the funds in its trust account, but to depositing the funds in a general account and distributing them. This was an act of conversion. (Knipe Land's citation of Lewis v. Trust Am. Title, Inc. is misplaced as the citation involves third parties. Further, there was no requirement monies be deposited in a trust account. In that action, Knipe Land relies on the 2005 and 2007 Employment Contracts to justify keeping the funds).

However, as set forth above, earnest monies and the division thereof are controlled by the Agreements to Sell and Purchase pursuant to Idaho Code § 54-2051. Even if the Employment Contracts were relevant and enforceable, nowhere in those Employment Contracts does it state that Knipe Land is entitled to any portion of the earnest monies in the MidAmerican Transaction as the earnest monies were not forfeited.

Knipe Land also argues:

Finally, if the Employment Contracts are totally unenforceable, as Defendants argue, then they provide no ground for Defendants to recover monies voluntarily paid to Plaintiff. *See Eaton v. Eaton*, 35 N.J.L. 290, 1871 WL 6784, at *3 (N.J. 1871) (when person voluntarily pays money that law would not compel him to pay by reason of statute of frauds, he has no remedy to recover said money); and *Fannin v. Cratty*, 480 A.2d 1056 (Pa. Super. Ct. 1984) (no recovery for damages based on breach of contract that did not satisfy statute of frauds because such award would be tantamount to enforcing otherwise unenforceable contract).

Plaintiff's Memorandum, pp. 28 – 29. In this action, Robertsons and Robertson Kennels are not seeking to enforce the Employment Contracts. Robertsons and Robertson Kennels are seeking to have the \$22,500.00 they were clearly entitled to receive pursuant to the Agreements to Sell and Purchase, which Knipe Land now refuses to return and has converted to its own use, returned to them as the rightful owner.

Robertsons and Robertson Kennels are entitled to summary judgment as to the \$22,500.00 that Knipe Land has tortiously converted to its own use. Further, Robertsons and Robertson kennels are entitled to pre-judgment interest thereon pursuant to Idaho Code § 28-22-104.

VII.

KNIPE LAND'S CLAIM REQUESTING INJUNCTIVE RELIEF PROHIBITING ROBERTSONS AND ROBERTSON KENNELS FROM LISTING THEIR REAL PROPERTY WITH ANOTHER REAL ESTATE BROKER IS WITHOUT MERIT.

In their Complaint, Knipe Land requests injunctive relief to maintain an exclusive listing to sell Robertsons' and Robertson Kennels' real property. Under no circumstance is such injunctive relief available to Knipe Land. Even if the 2005 and 2007 Employment contracts were valid (which they are not as set forth above), those Contracts specifically allow Robertsons and Robertson Kennels can withdraw their authority for Knipe Land to sell their real property. As such, Robertsons and Robertson Kennels are entitled to summary judgment on Knipe Land's claim for injunctive relief.

CONCLUSION

Pursuant to Idaho Code § 54-2051(4)(e) the Real Estate Purchase and Sale Agreement Robertsons entered into with Harmons and the Agreements to Sell and Purchase Robertsons and Robertson Kennels entered into with MidAmerican control the

distribution of earnest monies that are retained by “any person as forfeited payment should the transaction not close.” In this action, neither the Harmons or MidAmerican forfeited any earnest monies. In the case of the Harmons, the earnest monies were specifically paid in consideration of Robertsons extending the time to close. In the case of MidAmerican, the earnest monies were paid in consideration of the significant intrusion that Robertsons and Robertson Kennels incurred on their real property by MidAmerican. Further, the Agreements to Sell and Purchase specifically stated Robertsons and Robertson Kennels were to receive all earnest monies. Neither Harmons or MidAmerican defaulted under the terms of their contracts and as such, any forfeiture provisions never came into effect. Further, the monies had already been paid to Robertsons and/or Robertson Kennels at the time each contract was terminated so there were no monies to forfeit. (You can’t forfeit something you don’t have a right to).

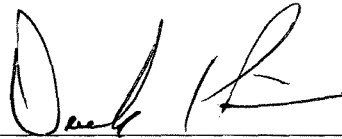
With regard to the 2005 and 2007 Employment Contracts, if those contracts were enforceable, a forfeiture would have been required before Knipe Land would have been entitled to receive any portion of the earnest monies. Further, the Real Estate Purchase and Sale Agreement and the Agreements to Sell and Purchase would have provided Knipe Land was entitled to a portion of the earnest monies. As set forth above, a forfeiture did not occur in either transaction. Regardless, Knipe Land cannot disregard the specific provisions of the Idaho Real Estate License Law.

With regard to the statute of frauds, Idaho Code § 54-2050 controls pursuant to Idaho Code § 54-2095. Idaho Code § 54-2050(1)(b) specifically provides a brokerage agreement must contain a legally enforceable description of the property. Neither the 2005 or the 2007 Employment Contract contained such a provision. Knipe Land is a real

estate professional and is held to a high standard in order to protect its clients. Knipe Land cannot avoid the specific requirements of Idaho Real Estate License Law as public policy demand compliance.

Robertsons and Robertson Kennels should be granted summary judgment as to all claims contained in Knipe Land's Complaint and Knipe Land's Complaint dismissed. Further, Robertsons and Robertson Kennels should be granted summary judgment on their claim for tortious conversion and judgment should be entered against Knipe Land in the amount of \$22,500.00 plus pre-judgment interest thereon. Finally, Knipe Land's Motion for Partial Summary Judgment should be denied.

DATED this 31st day of December, 2008.



Derek A. Pica
Attorney for Defendants

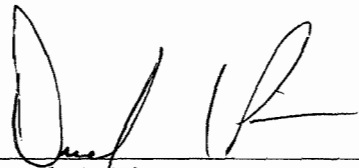
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 31st day of December, 2008, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s)

Mark S. Geston
STOEL RIVES, LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

Hand Deliver
U.S. Mail
Facsimile
Overnight Mail

☒
☐
☐
☐


Derek A. Pica

☒ ^{Range 4} RESIDENTIAL

Is signed inventory attached as part hereof? Yes _____ No ☒ : to be attached hereof? Yes _____ No ☒

To: Knife Land Company, Inc. Boise Idaho 9-1-05
Real Estate Broker City State Date

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and on the terms noted. You hereby are authorized to accept a deposit on the purchase price. You may, if desired, secure the cooperation of any other broker, or group of brokers, in procuring a sale of said property. In the event that you, or any other broker cooperating with you, shall find a buyer ready and able to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to 7 percent of said selling price. Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the Broker, as the balance shall be paid to me. The Broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission. Should an option be purchased, broker shall receive 7 percent of the option money at the time it is received by the seller. If the option is exercised, this amount shall be deducted from the commission due at closing. I agree to convey said real estate to the purchaser by good and sufficient deed, to transfer and deliver said personal property, if any, by good and sufficient bill of sale and to furnish either title insurance insuring or a complete abstract showing marketable title to said real estate and good right to convey. I hereby warrant that the information shown herein below is true, that I am the owner of said property, that my title thereto is a good and marketable title, that the same is or will be at closing free of encumbrances except taxes levied on said property for the current tax year which are to be pro-rated between the seller and buyer. In case of an exchange, I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you and "Prospective Buyers" to enter any part of said property to show the same. Seller shall not rely on broker for legal, or tax valuation advice and seller hereby releases broker from any liability to seller arising out of any legal or tax consequences arising out of or relating to the sale or attempted sale of the property. Seller is strongly encouraged to consult legal, tax, and appraisal professionals regarding the sale of property. The following items are to be left upon the premises as part of the property purchased: all irrigation fixtures and equipment, all water and water rights, ditches, and ditch right appurtenant thereto, and subject to the assessments therein, plumbing and heating fixtures and equipment (including water and oil tanks, but excluding fireplace fixtures and equipment), water heater, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, vacuum blinds, window and door screens, storm doors and windows, attached firelarm, attached television antennas, all shrubs and trees and all fixtures except _____ None _____ (or see inventory, if any, attached). The following personal property is also included as part of the property to be offered for sale for said _____ (or see inventory, if any, attached). None of the above described personal property nor any other personal property.

I, _____, hereby certify that I am the owner of the above described real property, which is being sold by me, previously attached to the above described real property so as to become a fixture there, is presently encumbered by a chattel mortgage now being sold to me by a conditional sale, except _____, Not
Applicable. Owner agrees to allow Broker to advertise said property any way he sees fit. This agreement expires on midnight on 9/7/06, but I further allow you reasonable time thereafter to close any deal on which earnest money is then deposited. In case of suit or action on this contract, I agree to pay such additional aid as the court may adjudge reasonable as plaintiff's attorneys fees. It is further agreed that my signature affixed to the removal clause below shall have the effect of renewing and extending your employment not now due to be fixed by me with the same terms and all with the same effect as if the said new date had been fixed above as the expiration date on your employment. The undersigned (Seller) has received, has read and understands the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned understand that the brokerage involved in this transaction will be or may be providing agency representation to both the buyer(s) and seller(s). The undersigned each understand that as agents for both buyer and seller, the brokerages will be limited dual agents and cannot legally disclose to either party certain confidential information concerning price negotiations, term or factors motivating the buyer to buy or the seller to sell without specific written permission of the disclosing party. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned each understands that all parties (buyers and sellers) must give their express written consent for the brokerage to act as a limited dual agent regarding any specific transaction or property. THIS LISTING IS AN EXCLUSIVE LISTING and you hereby grant the absolute, sole and exclusive right to sell or exchange said described property. In the event of any sale, by me or any other person, exchange or conveyance, of said property, or any part thereof, during the term of your employment, or because I withdraw the authority hereby given prior to said expiration date, I agree to pay you the said commission just the name as if a sale had actually been consummated by you.
For shall be reduced to 6% if no sale occurs after 90 days

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS CONTRACT.

Facsimile transmission of any signed original document, and retransmission of any signed transmissions, shall be the same as delivery of an original.

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER(s)/client and Buyer/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, Individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of

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any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship. SELLER does not consent to allow the BUYER'S Agents and/or Limited Dual Agents to show property and to allow the Broker to share brokerage fees as determined by the Broker with BUYER'S Agents and/or Limited Dual Agents.

SELLER NOTIFICATION AND CONSENT TO RELEASE FROM CONFLICTING AGENCY DUTIES: SELLER acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other Buyers and for Sellers in the sale of the property. SELLER has been advised and understands that it may create a conflict of interest for the Broker to introduce Buyers to Seller Client's property because Broker could not satisfy all of its Client duties to both Buyer Client and SELLER Client in connection with such a showing or any transaction which resulted.

Based on the understandings acknowledged, SELLER makes the following election: (Make one selection only)

Single Agency: SELLER does not want Broker to introduce interested BUYER Clients to Client SELLER'S property and hereby releases Broker from any Single Agency responsibility or duty under the agency agreement to do so. Broker shall be under no obligation or duty to introduce the BUYER to any Client SELLER'S property.

Limited Dual Agency: Seller does want Broker to introduce any interested client of Broker to Client Seller's property and hereby agrees to relieve Broker of conflicting agency duties including the duty to disclose confidential information known to the Broker at that time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the Buyer and Seller in the introduction of buyer to such client Seller's property and in the preparation of any contract of sale which may result. It is agreed that the Seller shall be notified by Broker whenever a Buyer Client of Broker desires to see Seller's property.

In consideration of the foregoing Listing and Authorization the undersigned Broker agrees to use diligence in procuring a Buyer. The SELLER agrees to provide good and marketable title to the property at the time of closing.

TRANSACTION RELATED SERVICES DISCLAIMER. In order to finalize the sale of the above referenced property, it may be necessary for the SELLER to employ the services of independent professionals to accomplish those tasks required to close the transaction. The Broker or their agents may, during the course of the transaction, identify individuals or entities who perform services. The SELLER understands that the identification of the service providers is solely for SELLER convenience and that the Broker or their agents are not guaranteeing or assuring that the service provider will perform its duties in accordance with the SELLER expectations.

Accepted: Knipe Land Company, Inc. 9/1/2005
by [Signature]

Broker

[Signature] 9/1/05 (SEAL)
[Signature] 9/1/05 (SEAL)
Office / Date

Owner's Address _____ City _____ State _____ Phone _____

Owner's Address _____ City _____ State _____ Phone _____

FOR VALUE RECEIVED, the above broker's employment hereby is renewed and extended to and including _____, 20____
Accepted: Knipe Land Company, Inc. _____, 20____ (SEAL)
by _____ (SEAL)
Broker Owner

Contact Information:

Main Office:
Knipe Land Company, Inc.
Box 1031
Boise ID 83701
Phone (208) 345 - 3163 Fax (208) 344-0936
www.knipeland.com

FAX 344-0936

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208-642-3744

Rowena Strain

Mar 02 07 06:48p

☐ ACREAGE

Business Venture = 1886.89 acres

EMPLOYMENT CONTRACT

☒ FARM/RANCH

THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE

Description 1886.89 acres, known as Robertson Ranch farm or ranch described as 8719 Little WillowCounty of Payette State of Idaho; more particularly described in "Exhibit A" by reference made a part hereof, the same as though set out in full herein. For personal property, if any to be included in property offered for sale for price next mentioned, see below or see inventory, to be attached.Selling price, free of encumbrances: \$ 6,001,000. Acceptable terms are cash and/or other terms or price that I may accept on all or any portion of the property. \$6,001,000Is signed inventory attached as part hereof? Yes ☒ No ☐; to be attached hereof? Yes ☒ No ☐To: Knipe Land Company, Inc. Boise Idaho Date 2/26/07
Real Estate Broker City State

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and on the terms noted. You hereby are authorized to accept a deposit on the purchase price. You may, if desired, secure the cooperation of any other broker, or group of brokers, in procuring a sale of said property. In the event that you, or any other broker cooperating with you, shall find a buyer ready, willing and able to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to 6 percent of said selling price. Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the Broker, as the balance shall be paid to me. The Broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission. Should an option be purchased, broker shall receive 6 percent of the option money at the time it is received by the seller. If the option is exercised, this amount shall be deducted from the commission due at closing. I agree to convey said real estate to the purchaser by good and sufficient deed, to transfer and deliver said personal property, if any, by good and sufficient bill of sale and to furnish either title insurance insuring or a complete abstract showing marketable title to said real estate and good right to convey. I hereby warrant that the information shown hereon below is true, that I am the owner of said property, that my title thereto is a good and marketable title, that the same is or will be at closing free of encumbrances except taxes levied on said property for the current tax year which are to be pro-rated between the seller and buyer. In case of an exchange, I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you and "Prospective Buyer" to enter any part of said property to show the same. Seller shall not rely on broker for legal, or tax valuation advice and seller hereby releases broker from any liability to seller arising out of or relating to the sale or attempted sale of the property. Seller is strongly encouraged to consult legal, tax, and appraisal professionals regarding the sale of property. The following items are to be left upon the premises as part of the property purchased: all irrigation fixtures and equipment, all water and water rights, ditches, and ditch right appurtenant thereto, and subject to the assessments therein, plumbing and heating fixtures and equipment (including stoker and oil tanks, but excluding fireplace fixtures and equipment), water heater, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, vacation blinds, window and door screens, storm doors and windows, attached linoleum, attached television antennas, all shrubs and trees and all fixtures except None (or see inventory, if any, attached). The following personal property is also included as part of the property to be offered for sale for said price: None of the above described personal property nor any other personal property previously attached to the above described real property so as to become a fixture there, is presently encumbered by a chattel mortgage nor being sold to me by a condition, except Not Applicable. Owner agrees to allow Broker to advertise said property any way he sees fit. This agreement expires on midnight on 6/2/07, but I further allow you reasonable time thereafter to close any deal on which earnest money is then deposited. In case of suit or action on this contract, I agree to pay such additional sum as the court may adjudge reasonable as plaintiff's attorneys fees. It is further agreed that my signature affixed to the renewal clause below shall have the effect of renewing and extending your employment to a new date to be fixed by me with the same terms and all with the same effect as if the said new date had been fixed above as the expiration date on your employment. The undersigned (Seller) has received, has read and understands the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned understand that the brokerage involved in this transaction will be or may be providing agency representation to both the buyer(s) and seller(s). The undersigned each understand that as agents for both buyer and seller, the brokerages will be limited dual agents and cannot legally disclose to either party certain confidential information concerning price negotiations, term or factors motivating the buyer to buy or the seller to sell without specific written permission of the disclosing party. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned each understand that all parties (buyers and sellers) must give their express written consent for the brokerage to act as a limited dual agent regarding any specific transaction or property. THIS LISTING IS AN EXCLUSIVE LISTING and you hereby are granted the absolute, sole and exclusive right to sell or exchange said described property. In the event of any sale, by me or any other person, exchange or conveyance, of said property, or any part thereof, during the term of your employment, or in case I withdraw the authority hereby given prior to said expiration date, I agree to pay you the said commission just the same as if a sale had actually been consummated by you.

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS CONTRACT.
Facsimile transmission of any signed original document, and retransmission of any signed transmissions, shall be the same as delivery of an original.

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER/client and Buyer/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of

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any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has a does not consent to allow the BUYER'S Agents and/or Limited Dual Agents to show property and to allow the Broker to share brokerage fees as determined by the B Dual Agents.

SELLER NOTIFICATION AND CONSENT TO RELEASE FROM CONFLICTING AGENCY DUTIES: SELLER acknowledges that Broker as name times Broker acts as agent(s) for other Buyers and for Sellers in the sale of the property. SELLER has been advised and understands that it Broker to introduce Buyers to Seller Client's property because Broker could not satisfy all of its Client duties to both Buyer Client and SEI showing or any transaction which resulted.

Based on the understandings acknowledged, SELLER makes the following election: (Make one selection only)

Single Agency: SELLER does not want Broker to introduce interested BUYER Clients to Client SELLER'S property and hereby releases Broker duty under the agency agreement to do so. Broker shall be under no obligation or duty to introduce the BUYER to any Client SELLER'S property.

Limited Dual Agency: SELLER does want Broker to introduce any interested client of Broker to Client SELLER'S property and hereby agrees to relit including the duty to disclose confidential information known to the Broker at that time and the duty of loyalty to either party. Relieved of all or unbiased manner to assist the Buyer and Seller in the introduction of buyer to such client SELLER'S property and in the preparation of any contract Seller shall be notified by Broker whenever a Buyer Client of Broker desires to see Seller's property.

In consideration of the foregoing Listing and Authorization the undersigned Broker agrees to use diligence in procuring a Buyer. The SELLER agrees to proceed time of closing.

TRANSACTION RELATED SERVICES DISCLAIMER. In order to finalize the sale of the above referenced property, it may be necessary for the SELLER to professionals to accomplish those tasks required to close the transaction. The Broker or their agents may, during the course of the transaction, identify individuals or understands that the identification of the service providers is solely for SELLER convenience and that the Broker or their agents are not guaranteeing or ensuring the accordance with the SELLER expectations.

Accepted: Knipe Land Company, Inc., 20
by Lawrence Starn
Broker 2/12/07 2/06/07 Owner / Date
Owner's Address 8719 Little Willow Rd City Payette State ID
Owner's Address _____ City _____ State _____

FOR VALUE RECEIVED, the above broker's employment hereby is renewed and extended to and including _____, 20
Accepted: Knipe Land Company, Inc., 20
by _____ Broker _____ Owner _____

Contact Information:

Main Office:
Knipe Land Company, Inc.
Box 1031
Boise ID 83701
Phone (208) 345-3163 Fax (208) 344-0936
www.knipeand.com

Names excluded from list
1. Pat Murphy - (Washington)
2. Susan Rich - (California)
3. Jim Hullister - Boise

KLC01510

Nov 02 05 11:06a Sally Tarbet

208-842-1589

p.2



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# 86836244

DATE 11/01/2005

LISTING AGENCY Knipe Land Co. Office Phone # 208/642-3432 Fax # 208/642-3244
 Listing Agent Rowena Strain E-Mail ronastrain@yahoo.com Phone # 208/739-3883
 SELLING AGENCY Silverhawk Realty Office Phone # 208/890-8899 Fax # 208/888-1589
 Selling Agent Sally Tarbet E-Mail sallytarbet@ms.com Phone # 208/890-8899

1. BUYER: Robert E. & Sheila N. Harmon (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
 COMMONLY KNOWN AS 8701 Little Willow Road City Payette
 County, ID, Zip 83661 legally described as: See attached

OR Legal Description Attached as addendum # A (Addendum must accompany original offer.)

2. \$2,475,000 PURCHASE PRICE: Two Million Four Hundred and Seventy-Five Thousand DOLLARS,
 payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$ 50,000 (A). EARNEST MONEY: BUYER hereby deposits Fifty Thousand DOLLARS as

Earnest Money evidenced by: ☐ cash ☒ personal check ☐ cashier's check ☐ note (due date):
☐ other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account.
☐ upon receipt, or ☒ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☒ Selling Broker ☐ other _____
 for the benefit of the parties hereto. The responsible Broker shall be Terry Rinearson.

(B). ALL CASH OFFER: ☐ NO ☒ YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with N/A
 (Not Applicable). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.
 BUYER agrees to provide SELLER within 10 business days from the date of this agreement, evidence of sufficient funds and/or proceeds
 necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or financial statement or contract(s)
 for the sale of BUYER'S current residence or other property to be sold.

\$ 0 (C). NEW LOAN PROCEEDS: This (C) is the total of the First Loan and the Second Loan if used.
☐ FIRST LOAN of \$ _____ not including mortgage insurance. This Agreement is contingent upon BUYER obtaining the
 following type(s) of financing: ☐ FHA ☐ VA ☐ CONVENTIONAL ☐ IHFA ☐ RURAL DEVELOPMENT ☐ OTHER _____ with interest not to
 exceed _____ % for a period of _____ year(s) at ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more than _____ point(s) plus
 origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER
☐ Divided Equally ☐ N/A.

☐ SECOND LOAN of \$ _____ for a period of _____ year(s) at ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more
 than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of
 the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.

LOAN APPLICATION: BUYER ☐ has applied ☐ shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____
 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
 credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender
 underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this
 agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does
 not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
 and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required
 by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER
 may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are
 fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the
 purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in
 accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct
 Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees
 required by FHA or VA.

\$ _____ (D). ADDITIONAL FINANCIAL TERMS:

☒ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
☐ Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

\$ 2,425,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing
 to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
 of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
 shall be adjusted at closing of escrow in: ☒ Cash ☐ Other _____.

BUYER'S Initials SH RH Date 11-1-05

SELLER'S Initials STR Date 11/01/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 5 JULY 2005 EDITION

PROPERTY ADDRESS: 8701 Little Willow Road Payette ID: 85836244

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing 1. Sellers must be willing to participate in 1031 exchange. 2. This offer is contingent upon the sale and close of Buyer's home/property located at 1600 E. Aerie Lane, Eagle, Idaho by February 15, 2006 or before. 3. THIS OFFER IS CONTINGENT UPON THE BUYERS SATISFACTORY DUE DILIGENCE TO BE COMPLETED ON OR BEFORE 45 DAYS OF SELLER'S ACCEPTANCE OF THIS OFFER.

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: gates, gated pipe, handlines, any related irrigation pumps, siphon tubes, squeeze chute, copy of aerial map of property.

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: All personal property, chukkar huts

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available.

(A). TITLE COMMITMENT: Prior to closing the transaction, ☒ SELLER or ☐ BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 5 business day(s) from receipt of the commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Pioneer Title Co. Title Company located at Rifleman St., Boise shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (SH)(RH) Date 11-1-05

SELLER'S Initials () () Date

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2004 EDITION

PROPERTY ADDRESS: 8701 Little Willow Road

Payette

ID#:

86836244**9. INSPECTION:**

(A). BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection ship lines 165 to 187. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 30 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproval of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, If applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproval of items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 3 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 3 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property ☒ is ☐ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home"; (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property; (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than n/a or the contingency will terminate; (d) that BUYER hereby ☒ waives ☐ does not waive this right; (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing; (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: ☒ Yes ☐ No ☐ N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's: ☐ Yes ☐ No ☒ N/A

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☐ Yes ☒ No ☐ N/A Association fees/dues are \$ _____ per _____ BUYER ☐ SELLER ☒ N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or property TRANSFER FEES of \$ _____ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "NA," "n.s.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials SH x RH Date 11-1-05SELLER'S Initials [Signature] Date 11/04/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY 2005 EDITION
PROPERTY ADDRESS: 8701 Little Willow Road

Payette

ID# 86836244

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ 0 of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

| | BUYER | SELLER | Shared Equally | N/A | | BUYER | SELLER | Shared Equally | N/A |
|-----------------------------------|-------|--------|----------------|-----|---|-------|--------|----------------|-----|
| Appraisal Fee | | | X | | Title Ins. Standard Coverage Owner's Policy | | X | | |
| Appraisal Re-Inspection Fee | | | | X | Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy | | | | X |
| Closing Escrow Fee | | | X | | Additional Title Coverage | X | | | |
| Lender Document Preparation Fee | | | | X | Fuel in Tank - Amount to be Determined by Supplier | X | | | |
| Tax Service Fee | | | | X | Well Inspection | | X | | |
| Flood Certification/Tracking Fee | | | | X | Septic Inspections | | X | | |
| Lender Required Inspections | | | | X | Septic Pumping | | X | | |
| Attorney Contract Preparation Fee | | | | X | Survey | | | | X |
| | | | | | | | | | |
| | | | | | | | | | |

17. OCCUPANCY: BUYER ☒ does ☐ does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately 5 calendar day(s) prior to close of escrow. NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) February 15, 2006

The parties agree that the CLOSING AGENCY for this transaction shall be Pioneer Title Co. located at Rifleman in Boise

If a long-term escrow / collection is involved, then the long-term escrow holder shall be n/a

21. POSSESSION: BUYER shall be entitled to possession ☐ upon closing or ☒ date March 15, 2006 time noon ☐ A.M. ☐ P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of closing

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (S H) (R H) Date 11-1-05

SELLER'S Initials A R P X Date 11/04/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY 2005 EDITION
PROPERTY ADDRESS: 8701 Little Willow Road

Payette ID#: 85836244

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interpose all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the 218 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (SA, RH) Date 11-1-05

SELLER'S Initials (AKA) Date 11/04/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY 2005 EDITION

PROPERTY ADDRESS: 8701 Little Willow Road Payette ID# 86836244

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) Nov. 3, 2005 at (Local Time in which property is located) 10:00 ☒ A.M. ☐ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

☒ SEE ATTACHED BUYER'S ADDENDUM(S): 1 (Specify number of BUYER addendum(s) attached.)

BUYER Signature Sheila Harmon
Date 11-1-05 Time 6:15 ☐ A.M. ☒ P.M.
Address P.O. Box 1180
E-Mail Address SheilaHarmon@Starband.net

BUYER (Print Name) SHEILA HARMON
Phone # 208-322-8474 Cell # 208-863-1474
City EAGLE State IDAHO Zip 83616
Fax # —

BUYER Signature Robert Harmon
Date 11-1-05 Time 6:15 ☐ A.M. ☒ P.M.
Address Same
E-Mail Address BobH@HarmonTravel.com

BUYER (Print Name) Robert Harmon
Phone # 208-322-8474 Cell # 208-891-2992
City — State — Zip —
Fax # 208-388-3003

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☒ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

☒ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # 2 & 3

SELLER Signature Richard A. Robertson
Date 11/1/05 Time 11:50 ☐ A.M. ☒ P.M.
Address —
E-Mail Address —

SELLER (Print Name) —
Phone # — Cell # —
City — State — Zip —
Fax # —

SELLER Signature —
Date — Time — ☐ A.M. ☐ P.M.
Address —
E-Mail Address —

SELLER (Print Name) —
Phone # — Cell # —
City — State — Zip —
Fax # —

CONTRACTOR REGISTRATION # (if applicable) —

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RE-11 ADDENDUM JULY 2003 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # 1 (1,2,3, etc.)



Date: November 1, 2005

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.
("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: November 1, 2005 ID # 86836244
ADDRESS: 8701 Little Willow Road, Payette, ID
BUYER(S): Harmon
SELLER(S): Robertson

The undersigned parties hereby agree as follows:

1. All water rights to be included with the property, including IDWR dam upgrade approval.
2. Included with this purchase agreement the 6+/- acre parcel fronting Little Willow Road, including driveway and irrigated pasture, located in the S 1/2 of NE 1/4 of the SW 1/4 S12 T9N 3W Boise Meridian.
3. Also included with the purchase agreement Robertson's Irrigated Field #15 (approximately 10.2 acres) lying East of Little Willow Creek.
4. Buyers request 45 days due diligence.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: Steve Harmon Date: 11-1-05
BUYER: Paul W. Date: 11-1-05
SELLER: Richard H. Robertson Date: 11/04/05
SELLER: _____ Date: _____

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RE-11 ADDENDUM JULY 2003 EDITION PAGE 1 OF 1

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888-1589

FAX 2 pages

Knipe Land Company, Inc.

860 Beacon, Boise, ID 83706

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Contact us:
BOISE - MAIN OFFICE

PHONE
208/345-3163

FAX
208/344-0936

TO: Sally
Silverhawk Realty

DATE: 01/26/2006

FROM:

☐ John Knipe, ALC, Broker
☐ Melody Frei, EMS
☒ Rowena Strain, GRI
☐ Stacey Anderson
☐ Jancy Knipe, ALC

☐ Bob Bennett
☐ Patricia Mitchell
☐ Becky Johnstone
☐ Jason Juker
☐ John Betts

☐ Rocket Stockett
☐ Amy Johnston
☐ Teddie Forschler
☐ Whitney Mockli
☐ Erin Runner

MESSAGE:

Richard will extend the closing
with an increase of \$25,000, which
Becomes non-refundable.

SIGNED: Rowena Strain

CONFIDENTIAL NOTICE: This facsimile transmission and the documents accompanying it, may contain confidential information belonging to the sender. This information is intended for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange the return of the documents. This facsimile is an advertisement of property for sale Copyright 2005.



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NORTHWEST LAND RESOURCES NEWSLETTER



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Phone 208/345-3163

Fax 208/344-0936

www.knipeland.com

MAIN OFFICE • BOISE

Branch Offices:

Cottonwood, Idaho

McCall, Idaho

Middleton, Idaho

Mountain Home, Idaho

Payette, Idaho

RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1

RE-11 ADDENDUM # 3 (1,2,3, etc.)Date: January 16, 2006

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.

("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 11-01-2005 ID# 86836244

ADDRESS: 8701 Little Willow Road, Payette, ID 83661

BUYER(S): Robert & Sheila Harmon

SELLER(S): Richard & Johnnie Robertson

The undersigned parties hereby agree as follows:

1. Closing date to be extended to May 15th, 2006.

2. Sales price to be increased \$25,000 for a total of \$2,500,000. THE \$25000 BECOMES NON-REFUNDABLE

3. The Sellers agree to apply for and receive the building permit they want before the sale is complete.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: _____ Date: _____

BUYER: _____ Date: _____

SELLER: _____ Date: _____

SELLER: _____ Date: _____

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RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1

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737

TOTAL P.02

1/10/2007

MAR-22-1998 19:49
Jan 26 06 02:09p Rowena Strain
Jan 26 08 01:22p Richard Robertson
Jan 26 06 01:04p Rowena Strain
JAN 26 06 10:10p GSAAD 10:10p

208-642-3744
(208) 642-3313
208-642-3744

P.01/02

p.2
P.1

p.1

RE-11 ADDENDUM # 1 (1,2,3, etc.)



RE-11 ADDENDUM # 1 (1,2,3, etc.)

Date: January 26, 1998



FAXED
2-16-06

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONTACT YOUR ATTORNEY IMMEDIATELY BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and should be attached to the original document.
(Addendum) means the entire document including this Addendum and any other documents which are being used in connection with the purchase and sale of the property.
In change, complete copies of the agreement (such as modification, addition or deletion of a term).

PURCHASE AND SALE AGREEMENT DATED: 11-01-1997
ADDRESS: 8741 Linda Street, Boise, ID 83725
BUYER: Richard S. Robertson
SELLER: Richard S. Robertson

The undersigned parties hereby agree as follows:

1. Closing date to be extended to May 15th, 1998.
2. Sales price to be increased \$25,000 for a total of \$250,000. The \$25,000 becomes non-refundable.
3. The Seller agrees to provide and receive the purchase price from the bank before the sale is completed.

To the extent the terms of this ADDENDUM modify or conflict with any provision of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, such terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain in effect. Upon its execution by both parties, this agreement is made an integral part of the Purchase and Sale Agreement.

BUYER: Richard S. Robertson
SELLER: Richard S. Robertson

Date: 2-15-06
Date: 1-26-2006
Date: 1-26-2006

This document is prepared and submitted by the undersigned parties. The document is not subject to review by the State Bar Association or any other organization. The undersigned parties are not attorneys and are not acting as such in this document.

RE-11 ADDENDUM # 1 (1,2,3, etc.)

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mailed
2/24/02



740

05-11-'06 13:14 FROM-

T-337 Y002/002 E-D34 P.01/01



RE-11 ADDENDUM # 1

(1,2,3, etc.)



Date: May 5, 2006

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

- 1 This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.
 2 ("Addendum" means that the information below is added material for the agreement (such as facts or descriptions) and/or means the form is being used
 3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
 4

5 PURCHASE AND SALE AGREEMENT DATED: November 1, 2005 ID # 95836244

6 ADDRESS: 6701 Little Willow Creek Road

7 BUYER(S): Robert and Sheila Watson

8 SELLER(S): Richard and Johnnie Robertson

9 The undersigned parties hereby agree as follows:

- 10 1. Buyer and seller agree to extend the closing date from May 15, 2006 to August 15, 2006.
 11 2. The buyer to release \$10,000 of the Earnest Money held on deposit to the seller before May 16, 2006;
 12 which shall be non-refundable; except in the event of the Seller's default.
 13 3. The survey is not fully complete and is not finalized and won't be unless buyer pays for final survey.
 14 Fence lines are not correct but it is agreed Buyer is buying based on the legal description. Seller.
 15 Broker, or agents of the buyer or seller make no warranties.
 16 4. Seller shall retain the hunting rights and right to go onto the property through March 1, 2007.
 17 5. The purchase price is \$2,325,000. Buyer shall receive credit at closing for any non-refundable earnest
 18 money or money on deposit paid.
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32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
 33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
 34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
 35 agreement is made an integral part of the aforementioned Agreement.

36 BUYER: Robert and Sheila Watson

Date: 5-15-06

37 BUYER: Robert and Sheila Watson

Date: 5-15-06

38 SELLER: Richard and Johnnie Robertson

Date: May 9, 2006

39 SELLER: Richard and Johnnie Robertson

Date: May 9, 2006

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RE-11 ADDENDUM, 4th EDITION, PAGE 1 OF 1

Company: Idaho Land Company, Inc.

S/N: PCF5-11804

Printed by: John Kilde

Printed using Software from Participation of Computer World CA, Inc.

SILVERHAWK REALTY, LLC.
REAL ESTATE TRUST ACCOUNT

2805 BLAINE ST. STE 200
CALDWELL, ID 83605

6661

52-378/1231
08

DATE 5/17/06

PAY
TO THE
ORDER OF

Triple Land Company BETA

\$ 10,000.00

DOLLARS



IDAHO INDEPENDENT BANK
Caldwell Office
620 S. Kimball Avenue
Caldwell, Idaho 83605
1-800-956-8300

#10-210 Robertson to Harmon
701 Little Willow Rd
Payette ID

John Owen

FOR DEPOSIT

John Owen

8701
Little Willow

⑆00666⑆ ⑆123103732⑆ 08000033⑆

Dep
5/19/06

KNIFE LAND COMPANY
REAL ESTATE TRUST ACCOUNT
PO BOX 986 208-345-3163
BOISE, ID 83701

1813

92-372/1231 3642

DATE May 19, 2006

PAY
TO THE
ORDER OF

Richard Robertson

\$ 10,000⁰⁰

Ten thousand & no/100

DOLLARS



Security
Feature:
Optical
Back

usbank

Fine Star Service Guaranteed

Release of Non-Ref EM

8701 Little Willow Rd

FOR

05-210 Robertson to Harmon Payette, ID

⑈0000001813⑈ ⑆123103729⑆ 153301726888⑈

mailed to seller

5119106

Aug 16 06 01:44p

Sally Tarbet

P.01/01

RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY JULY 2006 EDITION PAGE 1 OF 1



RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY
ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR
ACCOUNTANT BEFORE SIGNING.

RE: Purchase and Sale Agreement Dated: November 1, 2005 ID# 85838244
Hereinafter referred as "Contract" covering the following described property:

Property Address: 8701 5701 Little Willow Road

Legal Description: Long Legal - See File

BUYER: Bob and Sheila Harmon

SELLER: Richard and Johnnie Robertson

The undersigned BUYER and SELLER agree that the above real estate Contract WILL NOT be completed and hereby mutually release each other from all further obligations to buy, sell or exchange under the Contract and all related documents, and from all claims, actions, and demands which each may have against the other by reason of said Contract. It is the intent of this agreement that all rights and obligations arising out of said Contract are null and void. BUYER and SELLER further agree to release brokers and their associates from any claims, actions and demands by reason of releasing and disbursing of said earnest money deposit.

Earnest Money Holder: Silverhawk Realty

Amount of Earnest Money: Fifteen Thousand \$ 15,000

Earnest money holder, is hereby instructed to release and disburse said earnest money deposit in the following manner:

\$ 15000 TO: Bob and Sheila Harmon

\$ _____ TO: _____

\$ _____ TO: _____

BUYER: Bob Hc Date: 8-16-06

BUYER: _____ Date: _____

SELLER: Richard W. Robertson Date: 8-18-2006

SELLER: Johnnie R. Robertson Date: 8-18-2006

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RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY JULY 2006 EDITION PAGE 1 OF 1

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TOTAL P.01

746

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
7311 Potomac Drive
Boise, ID 83704

September 26, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

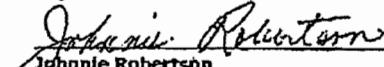
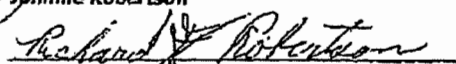
You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000.00 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

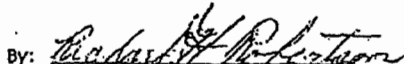
Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.


These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.


Johnnie Robertson

Richard Robertson

Robertson Kennels, Inc.

By: 
Its: President

Knipe Land Company Inc.


Broker

10-24-'07 16:10 FROM-Knipe Land
Oct 24 07 02:23p Richard Robertson
10-24-'07 10:32 FROM-Knipe Land

T-015 P002/002 F-038
(208) 542-3313 P.C.
T-014 P002/003 F-039

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 206
Boise, ID 83704

October 23, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

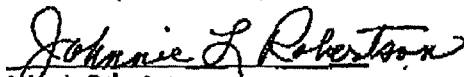
You are hereby instructed to act as follows:


Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

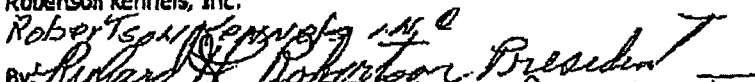
Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.



Johnnie Robertson

 Oct 24, 2007
Richard Robertson

Robertson kennels, Inc.


By: Richard H. Robertson President
Its: Richard H. Robertson President

Knipe Land Company Inc.


Broker

Dec 19 07 05:44p Richard Robertson
12-19-07 14:49 FROM-Knipe Land

(208) 642-3313 P.2
T-124 P004/004 F-351

2

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 260
Boise, ID 83704

December 18, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop


You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

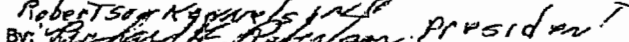
Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.

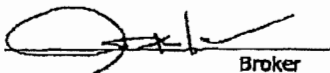

Johnnie Robertson


Richard Robertson

Robertson Kennels, Inc.

By:  President
Its: Richard A. Robertson

Knipe Land Company Inc.


Broker

Subject: Re: payette property

Date: Monday, February 11, 2008 2:02 PM

From: RobertsonRanch@aol.com

To: <ronastrain@yahoo.com>

Rowena:

The \$22,500.00 is the .05 percent real Astate fee for selling the property and I thought since it didn't sell it would come back to us.

That is interesting on the French company looking for a place to build a plant, maybe somebody should get in touch with them?

Richard

The year's hottest artists on the red carpet at the Grammy Awards. AOL Music takes you there. <<http://music.aol.com/grammys?NCID=aolcmp00300000002565>>



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www.knipeland.com

MAIN OFFICE • BOISE

Offices/Associates in:

Caldwell, Idaho

Cottonwood, Idaho

McCall, Idaho

Meridian, Idaho

Mountain Home, Idaho

Nampa, Idaho

Payette, Idaho

February 19, 2008

Richard & Jonnie Robertson
& Robertson Kennels
8719 Little Willow Road
Payette, Idaho 83661

Dear Richard & Jonnie:

Though your property's offers have not produced a closed sale yet, we have worked hard to sell your property and provide you with large amounts of non-refundable earnest money to compensate, if the sale did not occur.

Our listing agreement provides that Knipe Land Company is to receive 1/2 of any amount of money forfeited by a buyer. With all the time and effort on Knipe Land Company's behalf, we are asking for 1/2 of the forfeited money. The amounts we have already received would be deducted from the total due.

I appreciate your understanding in this matter.

Sincerely,

Knipe Land Company, Inc.

John Knipe, ALC, Broker



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THE RANGE WRITER

NORTHWEST LAND RESOURCES NEWSLETTER





February 27, 2008

BOX 1031 • BOISE, ID 83701

Phone 208/345-3163

Fax 208/344-0936

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MAIN OFFICE • BOISE

Offices/Associates in:

Caldwell, Idaho

Cottonwood, Idaho

McCall, Idaho

Meridian, Idaho

Mountain Home, Idaho

Nampa, Idaho

Payette, Idaho

Richard and Johnnie Robertson
8719 Little Willow Road
Payette, ID 83661

Richard and Johnnie,

I would like to believe people enter into agreements they read and intend to perform. The contractual agreements you signed with our office stated that disbursement of any such funds would be split fifty percent to the seller and fifty percent to the broker. Since we have not received the remainder of the forfeited earnest money due to Knipe Land Company, we feel that, to date, you have not honored the terms of the listing agreement. I am writing to let you know we disagree with your position on this issue and we reserve all our rights. We are open to terms or creative ideas to remedy this.

We understand you have been negotiating and showing property to buyers and not including us. We think this process would be a lot easier for you if you included us rather than excluded us from negotiations and showings. We are moving forward in good faith and we are continuing to honor the terms on our end of the agreement and we will continue to market and show your property.

Respectfully,

John Knipe / President

Knipe Land Co., Inc.



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Publishers of

THE RANGE WRITER

NORTHWEST LAND RESOURCES NEWSLETTER



DEREK A. PICA, PLLC

Attorney at Law

199 North Capitol Blvd., Suite 302

Boise, ID 83702

Phone (208) 336-4144

Facsimile (208) 336-4980

*Penny Bell
Legal Assistant*

March 10, 2008

John Knipe
President
Knipe Land Co, Inc.
P.O. Box 1031
Boise, ID 83701

Re: Richard and Johnnie Robertson

Dear Mr. Knipe:

I have reviewed your letters to Richard and Johnnie Robertson dated February 19 and 27, 2008 respectively wherein you claim Richard and Johnnie owe you one-half of the earnest monies paid by Mid American Nuclear Energy Company less \$22,500.00 that you have in your possession. Your letter of February 27, 2008 is particularly interesting in that you accuse Richard and Johnnie of not honoring the listing agreement they entered into with your real estate office and take exception to the fact that you perceive the Robertson's are showing their property to other potential buyers without including you. Frankly, it is your office that has not followed the agreement.

1. Your office's listing agreement with the Robertson's expired February 28, 2008. As such, Robertson's have no duty to include your office any further in their efforts to sell their property. It was their desire to enter into a new listing agreement with your office, however, given the position your office has taken since the Mid-American deal fell through, that appears to be impossible. In fact, Robertson's have not shown or negotiated with anyone regarding their property since the Mid-American deal fell through.

2. While the terms of the listing agreement Robertson's entered into with your office states . . . "Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the Broker, as the balance shall be paid to me. The Broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission." First, no monies were forfeited by Mid-American. All earnest monies were non-refundable when paid. Second, your commission was zero because the purchase did not occur. Finally, had there been monies forfeited, you as broker are subject to the requirements of Idaho Code § 54-2051 which provides:

54-2051. Offers to purchase. -

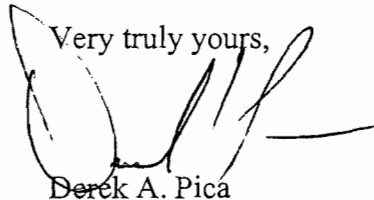
(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

* * *

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

The Real Estate Purchase and Sales Agreements entered into by the Robertson's with Mid-American specifically state all monies were to be released to them. Nowhere in the agreements is there a provision that your office was to receive a dime of the earnest money. As such, your office is not entitled to any of the earnest money paid by Mid-American. In fact, you have in your possession \$22,500.00 which belongs to the Robertson's. That money should be in your trust account and demand is hereby made that you remit to my office the \$22,500.00 within ten (10) days of the date of this letter as you are not entitled to that money.

Should you have any questions, do not hesitate to contact me.

Very truly yours,

Derek A. Pica

DAP:plb

cc: Richard and Johnnie Robertson

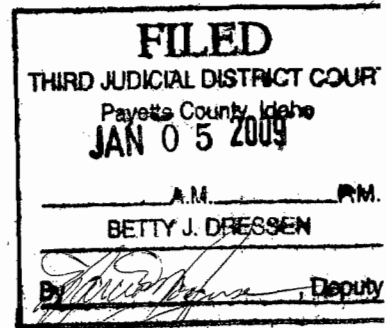
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DEREK A. PICA, PLLC

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Defendants



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

KNIFE LAND COMPANY, an Idaho Corporation,
Plaintiff,

vs.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and wife; and ROBERTSON KENNELS, INC., an Idaho Corporation,
Defendants.

Case No. CV 2008-682

**DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and wife; and ROBERTSON KENNELS, INC., an Idaho Corporation,

Third Party Plaintiffs,

vs.

JOHN KNIPE, an individual,
Third Party Defendant.

COMES NOW, the above-named Defendants / Counterclaimants, Richard A.

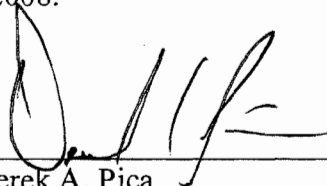
Robertson and Johnnie L. Robertson, husband and wife; and Robertson Kennels, Inc., by

and through their attorney of record, Derek A. Pica, and moves the above-entitled Court for its Order granting to said Defendants Summary Judgment against Plaintiff, Knipe Land Company on all of Plaintiff, Knipe Land's claims and on Defendants' tortious conversion claim.

This Motion is made pursuant to Rule 56(a) & (b), et. seq. of the Idaho Rules of Civil Procedure, and is based upon the files and records of the above-entitled Court, the Affidavit of Richard Robertson, Sr. and upon Defendants' Memorandum in Support of Motion for Partial Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment filed concurrently herewith.

Oral argument is hereby requested.

DATED this 31st day of December, 2008.



Derek A. Pica
Attorney for Defendants

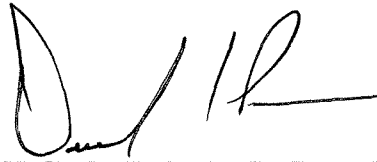
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 31ST day of December, 2008, I caused a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s)

Mark S. Geston
STOEL RIVES, LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

Hand Deliver
U.S. Mail
Facsimile
Overnight Mail

☒
☐
☐
☐



Derek A. Pica

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Defendants

| | |
|-------------------------------|--------|
| FILED | |
| THIRD JUDICIAL DISTRICT COURT | |
| Payette County, Idaho | |
| JAN 05 2009 | |
| 10:22 A.M. | P.M. |
| BETTY J. DRESSEN | |
| BY <i>[Signature]</i> | Deputy |

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

KNIFE LAND COMPANY, an Idaho Corporation,

Plaintiff,

vs.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,

Defendants.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,

Third Party Plaintiffs,

vs.

JOHN KNIPE, an individual,

Third Party Defendant.

Case No. CV 2008-682

NOTICE OF HEARING

PLEASE TAKE NOTICE that the above Defendants, by and through their
attorney of record, Derek A. Pica, will call up for hearing and argument Defendants'

Motion for Partial Summary Judgment before the Honorable Stephen W. Drescher, at the above Court in a courtroom of the Payette County Courthouse, 1130 3rd Ave. N., Payette, Idaho, on **Friday**, the **6th** day of **February**, **2009**, at the hour of **1:30 o'clock p.m.**, or as soon thereafter as counsel can be heard.

DATED this 31st day of December, 2008.



Derek A. Pica
Attorney for Defendants

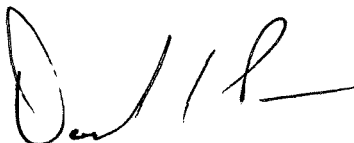
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 31st day of December, 2008, I caused a true and correct copy of the foregoing NOTICE OF HEARING to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s)

Mark S. Geston
STOEL RIVES, LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

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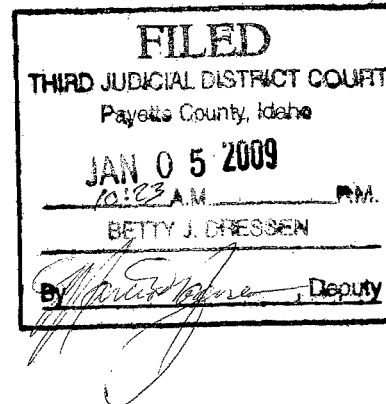


Derek A. Pica

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Defendants



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

KNIFE LAND COMPANY, an Idaho
Corporation,
Plaintiff,

vs.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,
Defendants.

RICHARD A. ROBERTSON and
JOHNNIE L. ROBERTSON, husband and
wife; and ROBERTSON KENNELS, INC.,
an Idaho Corporation,
Third Party Plaintiffs,

vs.

JOHN KNIPE, an individual,
Third Party Defendant.

Case No. CV 2008-682

**AFFIDAVIT OF RICHARD
ROBERTSON, SR. IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

[FILED UNDER SEAL]

STATE OF IDAHO)
 :SS.
County of Ada)

RICHARD ROBERTSON, SR., being first duly sworn on oath, deposes and says:

1. That Affiant is a Defendant in the above-entitled action as well as President of Robertson kennels, Inc. and has personal knowledge of all facts set forth herein.

2. That on or about November 5, 2005, Affiant entered into a Real Estate Purchase and Sale Agreement and Receipt for Earnest Money with Robert and Sheila Harmon to sell a parcel of real property owned by Affiant and his wife in Payette County, state of Idaho for \$2,475,000.00. A true and correct portion of the Real Estate Purchase and Sale Agreement and Receipt for Earnest Money is attached hereto as Exhibit "A." Pursuant to the terms of the Real Estate Purchase and Sale Agreement and Receipt for Earnest Money, hereinafter "Harmon Agreement," the Harmons paid \$50,000.00 as earnest money into a trust account. The Harmon Agreement was contingent upon Harmons being able to sell real property they owned in Eagle, Idaho and if Harmons were unable to do so they could terminate the Harmon Agreement and be refunded their \$50,000.00 in earnest money. A closing date was scheduled for March 15, 2006.

3. That Harmons were unable to sell their real property in Eagle, Idaho prior to the March 15, 2006 closing date and requested an extension. Affiant and Affiant's wife agreed to extend the closing date until May 15, 2006 so long as the Harmon Agreement was modified so that the purchase price was raised to \$2,500,000.00 and \$25,000.00 of the earnest monies became non-refundable and were paid to Affiant and

Affiant's wife. Harmons agreed to the extension agreement, otherwise the Harmon Agreement would have been terminated and the \$50,000.00 earnest money returned to the Harmons. A true and correct copy of the extension agreement is attached hereto as Exhibit "B."

4. That on February 24, 2006, Plaintiff, Knipe Land Company, paid to Affiant and his wife a check in the amount of \$25,000.00 from the Knipe Land Company Trust Account. A true and correct copy of the check is attached hereto as Exhibit "C." Plaintiff, Knipe Land Company, never requested a portion of the \$25,000.00 earnest money that was paid to Affiant and Affiant's wife, nor did they ever hint that they were entitled to a portion of the \$25,000.00. The \$25,000.00 was paid by Harmons in consideration of the extension. Had Plaintiff, Knipe Land Company requested a portion of the \$25,000.00, Affiant would not have agreed to the extension for the Harmons to close, nor would Defendants have continued their relationship with Plaintiff, Knipe Land Company.

5. That Harmons were unable to sell their real property in Eagle, Idaho prior to May 15, 2006 and requested a second extension. Affiant and Affiant's wife agreed to extend the closing date until August 15, 2006 so long as the Harmon Agreement was modified so that the purchase price was raised to \$2,525,000.00 and an additional \$10,000.00 of the earnest money became non-refundable and were paid to Affiant and Affiant's wife. Harmons agreed to the extension agreement, otherwise the Harmon Agreement would have been terminated and the remaining \$25,000.00 earnest money returned to Harmons. A true and correct copy of the second extension agreement and the

\$10,000.00 check paid to Affiant and his wife from the Knipe Land Company Trust Account is attached hereto as Exhibit "D."

6. That on May 19, 2006, Plaintiff, Knipe Land Company paid to Affiant and his wife a check in the amount of \$10,000.00 from the Knipe Land Trust Account. Plaintiff, Knipe Land Company never requested a portion of the \$10,000.00 earnest money that was paid to Affiant and Affiant's wife, nor did they ever hint that they were entitled to a portion of the \$10,000.00. The \$10,000.00 was paid by Harmons in consideration of the extension. Had Plaintiff, Knipe Land Company requested a portion of the \$10,000.00, Affiant would not have agreed to the extension for Harmons to close, nor would Defendants have continued their relationship with Plaintiff, Knipe Land Company.

7. That Harmons were unable to sell their real property in Eagle, Idaho prior to August 15, 2006 and on or about August 18, 2006, Harmons and Affiant and his wife terminated the Harmon Agreement and the remaining \$15,000.00 in earnest money was returned to the Harmons. A true and correct copy of the Notice to Terminate Contract and Release of Earnest Money is attached hereto as Exhibit "E." The \$15,000.00 in earnest money would not have been returned to Harmons had they defaulted on the Harmon Agreement.

8. That Affiant and Affiant's wife were required to pay federal and state income tax on the \$35,000.00 in tax year 2006 as the \$35,000.00 became taxable income as soon as it was received by Affiant and his wife.

9. That Plaintiff, Knipe Land Company demanded a portion of the \$35,000.00 for the first time on April 2, 2008 when Plaintiff, Knipe Land Company's

attorney sent a demand letter to Defendants' attorney. Prior to April 2, 2008, no claim was ever made or even mentioned by Plaintiff, Knipe Land Company. Had a claim been made or mentioned by Plaintiff, Knipe Land Company, Affiant would never have entered into the 2007 Employment Contract on behalf of Robertson Kennels, Inc., a true and correct copy of which is attached hereto as Exhibit "F." Further, the 2005 Employment Contract, a true and correct copy of which is attached hereto as Exhibit "G" would have been terminated by Affiant as well. Both the 2005 and 2007 Employment Contracts attached hereto as Exhibits "F" and "G" respectively are copies of what was signed and received by Defendants. There were no attachments or exhibits. Further, the extension lines on both the 2005 and 2007 Employment Contracts were never signed by either Plaintiff or Defendants.

10. That on or about September 24, 2007, Defendants entered into an Agreement to Sell and Purchase with MidAmerican Nuclear Holding Company to sell certain real property owned by Defendants in Payette and Washington Counties, state of Idaho. True and Correct copies of those Agreements to Sell and Purchase are attached to the Affidavit of Eric Bjorkman dated September 16, 2008. Pursuant to the terms of the Agreements to Sell and Purchase, MidAmerican was to pay non-refundable earnest monies to Defendants in four (4) installments with the first installment to be paid on September 24, 2007 in the amount of \$150,000.00, to be divided between Defendants Robertsons and Robertson Kennels, Inc.

11. That Defendants agreed to enter into the Agreements to Sell and Purchase with MidAmerican in part as a result of the earnest monies being non-refundable and being paid to Defendants. Pursuant to the terms of the Agreements to Sell and Purchase,

specifically paragraph 8(I), MidAmerican was granted access to Defendants' property to conduct testing, analysis, etc., which constituted a significant disruption to Defendants' use of their real property. As soon as the Agreement to Sell and Purchase was entered into on September 24, 2007, MidAmerican moved heavy equipment, drilling rigs, crews of geologists, surveyors, technicians and other crews and equipment onto Defendants' real property to determine whether Defendants' real property was an appropriate site to build a nuclear power plant. This intrusion onto Defendants' real property lasted for several months, 24/7, and Affiant was required to assist with MidAmerican's efforts as a result of Affiant's knowledge of Defendants' real property. Dozens of test wells were drilled and cased with concrete; towers were erected; roads were bulldozed, etc. Affiant and Affiant's families' lives were severely disrupted. Without the Agreement by MidAmerican to pay the non-refundable earnest monies to Defendants, Defendants would not have entered into the Agreements to Sell and Purchase because of the significant intrusion by MidAmerican. Further, Defendants would not have entered into the Agreements to Sell and Purchase if Plaintiff, Knipe Land Company were to receive a portion of the non-refundable earnest monies.

12. That on September 26, 2007, Plaintiff, Knipe Land Company instructed First American Title Company to release the first \$150,000.00 in earnest monies to be released to Defendants. A true and correct copy of the Instructions to Escrow signed by John Knipe as broker for Plaintiff, Knipe Land Company, is attached hereto as Exhibit "H." On October 23, 2007, Plaintiff, Knipe Land Company instructed First American Title Company to release the second \$150,000.00 in earnest monies to Defendants. A true and correct copy of the Instructions to Escrow signed by John Knipe as broker for

Plaintiff, Knipe Land Company is attached hereto as Exhibit "I." On December 18, 2007, Plaintiff, Knipe Land Company instructed First American Title Company to release the third \$150,000.00 in earnest monies to Defendants. A true and correct copy of the Instructions to Escrow signed by John Knipe as broker for Plaintiff, Knipe Land Company is attached hereto as Exhibit "J."

13. That Plaintiff, Knipe Land Company, withheld 5% of each installment for a total of \$22,500.00 as part of its anticipated commission when the sale of Defendants' real property was closed. Nowhere in the Agreements to Sell and Purchase or the 2005 and 2007 Employment Contracts does it state the Plaintiff, Knipe Land Company, was entitled to any portion of the earnest monies if the sale did not close. In January, 2008, prior to the last installment of the non-refundable earnest money being paid by MidAmerican, MidAmerican terminated the Agreements to Sell and Purchase they had entered into with Defendants pursuant to paragraph 8 of those Agreements. MidAmerican's termination was based upon contingencies in the Agreements to Sell and Purchase and as such, MidAmerican had every right to terminate without default under the terms of the Agreements to Sell and Purchase. MidAmerican did not pay the last non-refundable earnest money installment.

14. That as a result of receiving the \$427,500.00 in 2007 from MidAmerican, Defendants were required to pay federal and state income taxes on the \$427,500.00 in tax year 2007. Defendants would not have accepted the earnest monies and been subject to income taxes on the earnest monies received had Defendants believed Plaintiff, Knipe Land Company had any claim to those earnest monies.

15. That Defendants have spent the earnest monies remaining after taxes paying off all obligations they owed against the real property that was the subject matter of the Agreements to Sell and Purchase. Defendants would not have paid those obligations had Defendants believed Knipe Land had any claim to those earnest monies.

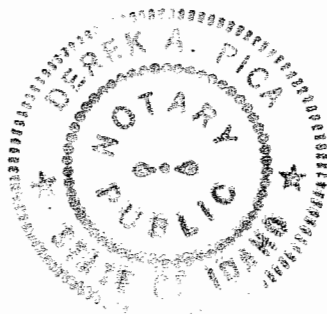
16. That on February 11, 2008, Affiant requested Plaintiff, Knipe Land Company to return the \$22,500.00 Knipe Land Company withheld from the earnest monies. A true and correct copy of that request is attached hereto as Exhibit "K." Attached hereto as Exhibit "L" is Plaintiff, Knipe Land Company's response refusing to return the \$22,500.00.

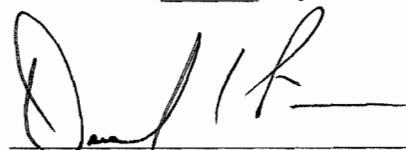
17. Pursuant to the terms of the 2005 and 2007 Employment Contracts, Defendants had the right to terminate those contracts at any time.

DATED this 30 day of December, 2008.


RICHARD ROBERTSON, SR.

SUBSCRIBED AND SWORN to before me this 30th day of December, 2008.





Notary Public for Idaho

Residing at Boise, Idaho

My Commission expires: 2011

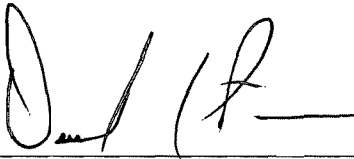
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 31st day of December, 2008, I caused a true and correct copy of the foregoing AFFIDAVIT OF RICHARD ROBERTSON, SR. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s)

Mark S. Geston
STOEL RIVES, LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

Hand Deliver
U.S. Mail
Facsimile
Overnight Mail

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Derek A. Pica



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT
AND RECEIPT FOR EARNST MONEY



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU
HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# 86836244

DATE 11/01/2005

LISTING AGENCY Knipe Land Co. Office Phone # 208/642-3432 Fax # 208/642-3244
Listing Agent Rowena Strain E-Mail ronastrain@yahoo.com Phone # 208/739-3883
SELLING AGENCY Silverhawk Realty Office Phone # 208/890-8899 Fax # 208/888-1589
Selling Agent Sally Tarbet E-Mail sallytarbet@ms.com Phone # 208/890-8899

1. BUYER: Robert E. & Sheila N. Harmon (Hereinafter called
"BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
COMMONLY KNOWN AS 8701 Little Willow Road City Payette
County, ID, Zip 83661 legally described as: See attached

OR Legal Description Attached as addendum # A (Addendum must accompany original offer.)

2. \$2,475,000 PURCHASE PRICE: Two Million Four Hundred and Seventy-Five Thousand DOLLARS,
payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$ 50,000 (A). EARNST MONEY: BUYER hereby deposits Fifty Thousand DOLLARS as
Earnst Money evidenced by: ☐ cash ☒ personal check ☐ cashier's check ☐ note (due date):
☐ other _____ and a receipt is hereby acknowledged. Earnst Money to be deposited in trust account
☐ upon receipt, or ☒ upon acceptance by all parties and shall be held by: ☐ Listing Broker ☒ Selling Broker ☐ other _____
for the benefit of the parties hereto. The responsible Broker shall be Terry Rinsarson

(B). ALL CASH OFFER: ☐ NO ☐ YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with N/A
(Not Applicable). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.
BUYER agrees to provide SELLER within 10 business days from the date of this agreement, evidence of sufficient funds and/or proceeds
necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or financial statement or contract(s)
for the sale of BUYER'S current residence or other property to be sold.

5.0 (C). NEW LOAN PROCEEDS: This (C) is the total of the First Loan and the Second Loan if used.
☐ FIRST LOAN of \$ _____ not including mortgage insurance. This Agreement is contingent upon BUYER obtaining the
following type(s) of financing: ☐ FHA ☐ VA ☐ CONVENTIONAL ☐ INHA ☐ RURAL DEVELOPMENT ☐ OTHER _____ with interest not to
exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more than _____ point(s) plus
origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the ☐ BUYER ☐ SELLER
☐ Divided Equally ☐ N/A.

☐ SECOND LOAN of \$ _____ for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____ BUYER shall pay no more
than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of
the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.

LOAN APPLICATION: BUYER ☐ has applied ☐ shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____
business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender
underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this
agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does
not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required
by lender, the property must appraise at not less than purchase price or BUYER'S Earnst Money may be returned at BUYER'S request. BUYER
may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are
fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the
purchase of the property described herein or to incur any penalty or forfeiture of Earnst Money deposits or otherwise unless BUYER has been given in
accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct
Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees
required by FHA or VA.

5 (D). ADDITIONAL FINANCIAL TERMS:

☒ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
☐ Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

\$ 2,425,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing
to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
shall be adjusted at closing of escrow in: ☒ Cash ☐ Other _____

BUYER'S Initials: SH RH Date 11-1-05

SELLER'S Initials: STR Date 11/01/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 8 JULY 2005 EDITION

EXHIBIT A

771

KLC02154

PROPERTY ADDRESS: 8701 Little Willow Road Payette ID#: 86836244

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing. 1. Sellers must be willing to participate in 1031 exchange. 2. This offer is contingent upon the sale and close of Buyer's home/property located at 1600 E. Aerie Lane, Eagle, Idaho by February 15, 2006 or before. 3. THIS OFFER IS CONTINGENT UPON THE BUYER'S SATISFACTORY DUE DILIGENCE TO BE COMPLETED ON OR BEFORE 45 DAYS OF SELLER'S ACCEPTANCE OF THIS OFFER.

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: gates, gated pipe, handlines, any related irrigation pumps, siphon tubes, squeeze chute, copy of aerial map of property.

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: All personal property, chukkar huts

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available.

(A). TITLE COMMITMENT: Prior to closing the transaction, ☒ SELLER or ☐ BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 5 business days from receipt of the commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Pioneer Title Co. Title Company located at Rifleman St., Boise shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (SH & RH) Date 11-1-05 SELLER'S Initials () () Date

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PROPERTY ADDRESS: 8701 Little Willow Road Payette ID#: 86836244

9. INSPECTION:

(A). BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip lines 165 to 187. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 30 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproval of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92584-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproval of items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 3 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 3 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property ☒ is ☐ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than n/a or the contingency will terminate, (d) that BUYER hereby ☒ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: ☒ Yes ☐ No ☐ N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. ☐ Yes ☐ No ☒ N/A

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☐ Yes ☒ No ☐ N/A Association fees/dues are \$ _____ per _____ BUYER ☐ SELLER ☒ N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or property TRANSFER FEES of \$ _____ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.p.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials SH x RH Date 11-1-05 SELLER'S Initials AP Date 11/04/05

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PROPERTY ADDRESS: 8701 Little Willow Road Payette ID#: 86836244

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ 0 of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

| | BUYER | SELLER | Shared Equally | N/A | | BUYER | SELLER | Shared Equally | N/A |
|-----------------------------------|-------|--------|-------------------|-----|--|-------|--------|-------------------|-----|
| Appraisal Fee | | | X | | Title Ins. Standard Coverage Owner's Policy | | X | | |
| Appraisal Re-Inspection Fee | | | | X | Title Ins. Extended Coverage Lender's Policy - Mortgage Policy | | | | X |
| Closing Escrow Fee | | | X | | Additional Title Coverage | X | | | |
| Lender Document Preparation Fee | | | | X | Fuel in Tank - Amount to be Determined by Supplier | X | | | |
| Tax Service Fee | | | | X | Well Inspection | | X | | |
| Flood Certification/Tracking Fee | | | | X | Septic Inspections | | X | | |
| Lender Required Inspections | | | | X | Septic Pumping | | X | | |
| Attorney Contract Preparation Fee | | | | X | Survey | | | | X |
| | | | | | | | | | |
| | | | | | | | | | |

17. OCCUPANCY: BUYER ☒ does ☐ does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately 5 calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) February 15, 2006. The parties agree that the CLOSING AGENCY for this transaction shall be Pioneer Title Co. located at Rifleman in Boise. If a long-term escrow / collection is involved, then the long-term escrow holder shall be n/a.

21. POSSESSION: BUYER shall be entitled to possession ☐ upon closing or ☒ date March 15, 2006 time noon ☐ A.M. ☐ P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of closing.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (SA X RH) Date 11-1-05

SELLER'S Initials (AKR X) Date 11/04/05

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY 2005 EDITION

PROPERTY ADDRESS: 8701 Little Willow Road

Payette

ID#: 85836244

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the 318 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (SA) (RH) Date 11-1-05

SELLER'S Initials (PMA) () Date 11/04/05

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PROPERTY ADDRESS: 8701 Little Willow Road Payette ID# 86836244

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) Nov. 3, 2005 at (Local Time in which property is located) 10:00 ☒ A.M. ☐ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

☒ SEE ATTACHED BUYER'S ADDENDUM(S): 1 (Specify number of BUYER addendum(s) attached.)

BUYER Signature Sheila Harmon
Date 11-1-05 Time 6:15 ☐ A.M. ☒ P.M.
Address P.O. Box 1190
E-Mail Address SheilaHarmon@Starband.net

BUYER (Print Name) Sheila Harmon
Phone # 208-322-8974 Cell # 208-863-1474
City Eagle State Idaho Zip 83616
Fax # —

BUYER Signature Robert Harmon
Date 11-1-05 Time 6:15 ☐ A.M. ☒ P.M.
Address Same
E-Mail Address BobH@HarmonTravel.com

BUYER (Print Name) Robert Harmon
Phone # 208-322-8474 Cell # 208-891-2992
City — State — Zip —
Fax # 208-388-3003

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☒ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

☒ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # 2 & 3

SELLER Signature Richard A. Robertson
Date 11/04/05 Time 11:50 ☒ A.M. ☐ P.M.
Address —
E-Mail Address —

SELLER (Print Name) —
Phone # — Cell # —
City — State — Zip —
Fax # —

SELLER Signature —
Date — Time — ☐ A.M. ☐ P.M.
Address —
E-Mail Address —

SELLER (Print Name) —
Phone # — Cell # —
City — State — Zip —
Fax # —

CONTRACTOR REGISTRATION # (if applicable) —

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RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # 1 (1,2,3, etc.)



Date: November 1, 2005

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.

("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: November 1, 2005 ID # 86836244

ADDRESS: 8701 Little Willow Road, Payette, ID

BUYER(S): Harmon

SELLER(S): Robertson

The undersigned parties hereby agree as follows:

1. All water rights to be included with the property, including IDWR dam upgrade approval.

2. Included with this purchase agreement the 6+/- acre parcel fronting Little Willow Road, including driveway and irrigated pasture, located in the S 1/2 of NE 1/4 of the SW 1/4 S12 T9N 3W Boise Meridian.

3. Also included with the purchase agreement Robertson's Irrigated Field #15 (approximately 10.2 acres) laying East of Little Willow Creek.

4. Buyers request 45 days due diligence.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: Shirley Harmon

Date: 11-1-05

BUYER: Paul W.

Date: 11-1-05

SELLER: Richard W. Robertson

Date: 11/04/05

SELLER:

Date:

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RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1

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never have
888-1589

FAX *2 pages*

Knipe Land Company, Inc.
860 Beacon, Boise, ID 83706

Agricultural - Commercial - Recreation - Farm and Ranch
Brokers & Consultants Since 1944
Idaho / Nevada / Oregon / Montana / Washington Brokerage

View properties at: www.knipeland.com
FREE CATALOG MAILED UPON REQUEST

Contact us:
BOISE - MAIN OFFICE

PHONE
208/345-3163

FAX
208/344-0936

TO: Sally
Silverhawk Realty

DATE: 01/26/2006

FROM:

☐ John Knipe, ALC, Broker
☐ Melody Frei, EMS
☒ Rowena Strain, GRI
☐ Stacey Anderson
☐ Janey Knipe, ALC

☐ Bob Bennett
☐ Patricia Mitchell
☐ Becky Johnstone
☐ Jason Juker
☐ John Betts

☐ Rocket Stockett
☐ Amy Johnston
☐ Teddie Forschler
☐ Whitney Mockli
☐ Erin Runner

MESSAGE:

*Richard will extend the closing
with an increase of \$25,000, which
becomes non-refundable.*

SIGNED: Rowena Strain

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Publishers of

THE RANGE WETTER
NORTHWEST LAND RESOURCES NEWSLETTER



EXHIBIT "B"

778

RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1

RE-11 ADDENDUM # 3 (1,2,3, etc.)Date: January 16, 2006

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.

("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

PURCHASE AND SALE AGREEMENT DATED: 11-01-2005 ID# 86836244

ADDRESS: 8701 Little Willow Road, Payette, ID 83661

BUYER(S): Robert & Sheila Harmon

SELLER(S): Richard & Johnnie Robertson

The undersigned parties hereby agree as follows:

1. Closing date to be extended to May 15th, 2006.

2. Sales price to be increased \$25,000 for a total of \$2,500,000. THE \$25000 BECOMES NON-REFUNDABLE

3. The Sellers agree to apply for and receive the building permit they want before the sale is complete.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: _____ Date: _____

BUYER: _____ Date: _____

SELLER: _____ Date: _____

SELLER: _____ Date: _____

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RE-11 ADDENDUM JULY 2005 EDITION PAGE 1 OF 1

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779

TOTAL P.02

K1 C02207

MAR-22-1998 19:49
Jan 26 06 02:09p Rowens Strain
Jan 26 08 01:22p Richard Robertson
Jan 26 06 01:04p Rowens Strain
JAN 26 06 01:04p ROWENS STRAIN

208-642-3744
(20M) 642-3744
208-642-3744

P.01/02

p.2
P.1

p.1

RE-11 ADDENDUM 8



RE-11 ADDENDUM 8 (1,2,3, etc.)



FAXED
2-16-06

Date: January 15, 2006

THIS IS A LEGALLY BINDING CONTRACT AND THE BUYER'S AGREEMENT ADDENDUM 8 IS ATTACHED. IF YOU HAVE ANY QUESTIONS, CONTACT THE SELLER'S REAL ESTATE AGENT OR THE BUYER'S AGENT.

1. This is an ADDENDUM to the Purchase and Sale Agreement and should be signed by both parties.
2. (Addendum) states that the Buyer's Agreement Addendum 8 is attached to the Purchase and Sale Agreement and should be signed by both parties.
3. It is the Buyer's responsibility to ensure that the agreement is signed by both parties.

4. PURCHASE AND SALE AGREEMENT DATED: 11-01-2005

5. ADDRESS: 8701 Little Valley Road, Potomac, MD 20854

6. BUYER: Richard S. Robertson

7. SELLER: Richard S. Robertson

8. The undersigned parties hereby agree as follows:

9. 1. Closing date to be scheduled to May 15th, 2006.

10. 2. Sales price to be increased from \$25,000 to a total of \$25,000. The \$25,000 becomes Non-Refundable.

11. 3. The Seller agrees to provide and receive the following items that must be provided to the Buyer in writing:

12. _____

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RE-11 ADDENDUM 8

mailed
2/24/00



05-11-'06 13:14 FROM-

T-337 P002/002 r-034 P.01/01



RE-11 ADDENDUM #

(1,2,3, etc.)



Date: May 5, 2006

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money.

2 ("Addendum" means that the information below is added material for the agreement (such as facts or descriptions) and/or means the form is being used
3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

4
5 PURCHASE AND SALE AGREEMENT DATED: November 1, 2005 ID # 85816244

6 ADDRESS: 8701 Little Willow Creek Road

7 BUYER(S): Robert and Sheila Hanson

8 SELLER(S): Richard and Johnnie Robertson

9 The undersigned parties hereby agree as follows:

10 1. Buyer and Seller agree to extend the closing date from May 15, 2006 to August 15, 2006.

11 2. The buyer to release \$10,000 of the Earnest Money held on deposit to the seller before May 15, 2006;

12 which shall be non-refundable : except in the event of the seller's default.

13 3. The survey is not fully complete and is not finalized and won't be unless buyer pays for final survey.

14 Fence lines are not correct but it is agreed Buyer is buying based on the legal description. Seller,

15 Broker, or agents of the buyer or Seller make no warranties.

16 4. Seller shall retain the hunting rights and right to go onto the property through March 1, 2007.

17 5. The purchase price is \$2,325,000. Buyer shall receive credit at closing for any non-refundable earnest
18 money or money on deposit paid.

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32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
35 agreement is made an integral part of the aforementioned Agreement.

36 BUYER: Sheila Hanson

Date: 5-15-06

37 BUYER: Robert Hanson

Date: 5-15-06

38 SELLER: Richard E. Robertson

Date: May 9, 2006

39 SELLER: Johnnie Robertson

Date: May 9, 2006

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RE-11 ADDENDUM ONLY, 2ND EDITION PAGE 1 OF 1

Company: Idaho Land Company, Inc.

S/N: PCF5-11504

Provided by: JOHN KRIE

Please bring 2 official copies of this form to the closing.

TOTAL P.01

EXHIBIT "D"

782

KLC02289

SILVERHAWK REALTY, LLC.
REAL ESTATE TRUST ACCOUNT

6661

2805 BLAINE ST. STE 200
CALDWELL, ID 83605

DATE 5 17 06

92-378/4231
08

PAY
TO THE
ORDER OF

Thru Land Company BETA

\$ 10,000⁰⁰

to Payroll 00/101

DOLLARS ☐



IDAHO INDEPENDENT BANK
Caldwell Office
620 S. Kimball Avenue
Caldwell, Idaho 83605
1-800-756-8300

#05 210 Robertson to Harmon
to Little Willow Rd
Payette ID

John Owen

FOR *05/16/06* *Robertson, James*

8701

Little Willow

⑆006666⑆ ⑆123403732⑆ 080000331⑆

*Dep
5/19/06*

KNIFE LAND COMPANY
REAL ESTATE TRUST ACCOUNT
PO BOX 986 208-345-3163
BOISE, ID 83701

1813

92-372/1231 3642

DATE May 19, 2006

PAY
TO THE
ORDER OF

Richard Robertson

\$ 10,000⁰⁰

DOLLARS



Security
Features
Details
Bank



Fine Star Service Guaranteed

Release of Non-Ref EM

8701 Little Willow Rd

FOR

05210 Robertson to Harmon Payette, ID

⑈0000001813⑈ ⑆123103729⑆ 153301726888⑈

mailed to seller
5119106

Aug 16 06 01:44p

Sally Tarbet

200-888-1000

P.01/01

RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY JULY 2006 EDITION PAGE 1 OF 1



RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY
ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR
ACCOUNTANT BEFORE SIGNING.



1 RE: Purchase and Sale Agreement Dated: November 1, 2005 ID# 86818244
2 Hereinafter referred as "Contract" covering the following described property:

3
4 Property Address: 8701 8701 Little Willow Road

5
6 Legal Description: Long Legal - See File

7
8 BUYER: Bob and Sheila Harmon

9
10 SELLER: Richard and Johnnie Robertson

11
12 The undersigned BUYER and SELLER agree that the above real estate Contract WILL NOT be completed and
13 hereby mutually release each other from all further obligations to buy, sell or exchange under the Contract and
14 all related documents, and from all claims, actions, and demands which each may have against the other by
15 reason of said Contract. It is the intent of this agreement that all rights and obligations arising out of said
16 Contract are null and void. BUYER and SELLER further agree to release brokers and their associates from any
17 claims, actions and demands by reason of releasing and disbursing of said earnest money deposit.

18
19 Earnest Money Holder: Silverhawk Realty

20
21 Amount of Earnest Money: Fifteen Thousand \$ 15,000

22
23 Earnest money holder, is hereby instructed to release and disburse said earnest money deposit in the following
24 manner:

25
26 \$ 15000 TO: Bob and Sheila Harmon

27
28 \$ TO:

29
30 \$ TO:

31
32 BUYER: Bob Hc Date: 8-16-06

33
34 BUYER: Date:

35
36 SELLER: Richard W. Robertson Date: 8-18-2006

37
38 SELLER: Johnnie R. Robertson Date: 8-18-2006

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RE- 20 NOTICE TO TERMINATE CONTRACT AND RELEASE OF EARNEST MONEY JULY 2006 EDITION PAGE 1 OF 1

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TOTAL P.01

785

EXHIBIT "E"

KLC02310

p.1

208-642-3744

Rowena Strain

Mar 02 07 06:48p

☐ ACREAGE

Business Venture = 1886.89 acres -

EMPLOYMENT CONTRACT

☒ FARM/RANCH

THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

Description 1886.89 acres, known as Robertson Ranch farm or ranch described as 8719 Little WillowCounty of Payette State of Idaho; more particularly described in "Exhibit A" by reference made a part hereof, the same as though set out in full herein. For personal property, if any to be included in property offered for sale for price next mentioned, see below or see inventory, to be attached.Selling price, free of encumbrances: \$ 6,001,000 Acceptable terms are cash and/or other terms or price that I may accept on all or any portion of the property. \$6,001,000Is signed inventory attached as part hereof? Yes ☒ No ☐; to be attached hereof? Yes ☒ No ☐To: Knipe Land Company, Inc. Boise Idaho Date 2/06/07
Real Estate Broker City State

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and on the terms noted. You hereby are authorized to accept a deposit on the purchase price. You may, if desired, secure the cooperation of any other broker, or group of brokers, in procuring a sale of said property. In the event that you, or any other broker cooperating with you, shall find a buyer ready, willing and able to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to 6 percent of said selling price. Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the Broker, as the balance shall be paid to me. The Broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission. Should an option be purchased, broker shall receive 6 percent of the option money at the time it is received by the seller. If the option is exercised, this amount shall be deducted from the commission due at closing. I agree to convey said real estate to the purchaser by good and sufficient deed, to transfer and deliver said personal property, if any, by good and sufficient bill of sale and to furnish either title insurance insuring or a complete abstract showing marketable title to said real estate and good right to convey. I hereby warrant that the information shown hereon below is true, that I am the owner of said property, that my title thereto is a good and marketable title, that the same is or will be at closing free of encumbrances except taxes levied on said property for the current tax year which are to be pro-rated between the seller and buyer. In case of an exchange, I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you and "Prospective Buyers" to enter any part of said property to show the same. Seller shall not rely on broker for legal, or tax valuation advice and seller hereby releases broker from any liability to seller arising out of any legal or tax consequences arising out of or relating to the sale or attempted sale of the property. Seller is strongly encouraged to consult legal, tax, and appraisal professionals regarding the sale of property. The following items are to be left upon the premises as part of the property purchased: all irrigation fixtures and equipment, all water and water rights, ditches, and ditch right appurtenant thereto, and subject to the assessments therein, plumbing and heating fixtures and equipment (including stoker and oil tanks, but excluding fireplace fixtures and equipment), water heater, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, venetian blinds, window and door screens, storm doors and windows, attached linoleum, attached television antennas, all shrubs and trees and all fixtures except None (or sec inventory, if any, attached). The following personal property is also included as part of the property to be offered for sale for said price: None of the above described personal property nor any other personal property previously attached to the above described real property so as to become a fixture there, is presently encumbered by a chattel mortgage not being sold to me by a condition yes except Not Applicable.

Owner agrees to allow Broker to advertise said property any way he sees fit. This agreement expires on midnight on 2/01/07, but I further allow you reasonable time thereafter to close any deal on which earnest money is then deposited. In case of suit or action on this contract, I agree to pay such additional sum as the court may adjudicate reasonable as plaintiff's attorneys fees. It is further agreed that my signature affixed to the renewal clause below shall have the effect of renewing and extending your employment to a new date to be fixed by me with the same terms and all with the same effect as if the said new date had been fixed above as the expiration date on your employment. The undersigned (Seller) has received, has read and understands the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned understand that the brokerage involved in this transaction will be or may be providing agency representation to both the buyer(s) and seller(s). The undersigned each understand that as agents for both buyer and seller, the brokerages will be limited dual agents and cannot legally disclose to either party certain confidential information concerning price negotiations, terms or factors motivating the buyer to buy or the seller to sell without specific written permission of the disclosing party. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned each understands that all parties (buyers and sellers) must give their express written consent for the brokerage to act as a limited dual agent regarding any specific transaction or property. THIS LISTING IS AN EXCLUSIVE LISTING and you hereby are granted the absolute, sole and exclusive right to sell or exchange said described property. In the event of any sale, by me or any other person, exchange or conveyance, of said property, or any part thereof, during the term of your employment, or in case I withdraw the authority hereby given prior to said expiration date, I agree to pay you the said commission just the same as if a sale had actually been consummated by you.

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS CONTRACT.

Facsimile transmission of any signed original document, and retransmission of any signed transmissions, shall be the same as delivery of an original.

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER/client and Buyer/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of

KLC01509

EXHIBIT "F"

786

787

☒ ^{Range or} ~~RESIDENTIAL~~

Description 1400 +/- acres, known as RICHTER ROBERTSON, farm or ranch

personal property, if any to be included in property offered for sale for price next mentioned, see below or see inventory, to be attached.

Is signed inventory attached as part hereof? Yes _____ No ☒ : to be attached hereof? Yes _____ No ☒

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described herein at the selling price and on the terms noted. You hereby are authorized to accept deposits on the purchase price. You may, if desired, secure the cooperation of any other broker, or group of brokers, in procuring a sale of said property. In the event that you, or any other broker cooperating with you, shall find a buyer ready, willing and able to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your employment you place me into contact with a buyer to or through whom at any time within 180 days after termination of said employment, I may sell or convey said property, I hereby agree to pay you in cash for your services a commission equal in amount to percent of said selling price. Should a deposit or amounts paid on account of purchase be forfeited, one-half thereof may be retained by you, as the Broker, as the balance shall be paid to me. The Broker's share of any forfeited deposit or amounts paid on account of purchase, however, shall not exceed the commission. Should an option be purchased, broker shall receive 7 percent of the option money at the time it is received by the seller. If the option is exercised, this amount shall be deducted from the commission due at closing. I agree to convey said real estate to the purchaser by good and sufficient deed, to transfer and deliver said personal property, if any, by good and sufficient bill of sale and to furnish either title insurance insuring or a complete abstract showing marketable title to said real estate and good right to convey. I hereby warrant that the information shown herein below is true, that I am the owner of said property, that my title thereto is a good and marketable title, that the same is or will be at closing free of encumbrances except taxes levied on said property for the current tax year which are to be pro-rated between the seller and buyer. In case of an exchange, I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you and "Prospective Buyers" to enter any part of said property to show the same. Seller shall not rely on broker for legal, or tax valuation advice and seller hereby releases broker from any liability to seller arising out of or relating to the sale or attempted sale of the property. Seller is strongly encouraged to consult legal, tax, and appraisal professionals regarding the sale of property. The following items are to be left upon the premises as part of the property purchased: all irrigation fixtures and equipment, all water and water rights, ditches, and ditch right appurtenant thereto, and subject to the assessments therein, plumbing and heating fixtures and equipment (including water and oil tanks, but excluding fireplace fixtures and equipment), water heater, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, vacuum blinds, window and door screens, storm doors and windows, attached linoleum, attached television antennas, all shrubs and trees and all fixtures except _____ None _____ (or see inventory, if any, attached). The following personal property _____ None _____ is also included as part of the property to be offered for sale for said price: _____ None _____ None of the above described personal property nor any other personal property.

previously attached to the above described real property so as to become a fixture there, in presently encumbered by a chattel mortgage nor being sold to me by a conditional sale, except as provided herein. Not
Applicable Owner agrees to allow broker to advertise said property any way he sees fit. This agreement expires on midnight on 9-10-62 but I further allow you reasonable time (thereafter to close any deal) on which earnest money is then deposited. In case of suit or action on this contract, I agree to pay such additional sale as the court may adjudge reasonable as plaintiff's attorneys fees. It is further agreed that my signature affixed to the removal clause below shall have the effect of renewing and extending your employment to now due to be fixed by me with the same terms and all with the same effect as if the said new date had been fixed above as the expiration date on your employment. The undersigned (Seller) has received, has read and understands the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned understand that the brokerage involved in this transaction will be or may be providing agency representation to both the buyer(s) and seller(s). The undersigned each understand that as agents for both buyer and seller, the brokerages will be limited dual agents and cannot legally disclose to either party certain confidential information concerning price negotiations, term or factors motivating the buyer to buy or the seller to sell without specific written permission of the disclosing party. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2063, Idaho Code. The undersigned each understand that all parties (buyers and sellers) must give their express written consent to the brokerage as acting as a limited dual agent regarding any specific transaction or property. **THIS LISTING IS AN EXCLUSIVE LISTING** and you hereby are granted the absolute, sole and exclusive right to sell or exchange said described property. In the event of any sale, by me or any other person, exchange or conveyance, of said property, or any part thereof, during the term of your employment, or because I withdraw the authority hereby given prior to said expiration date, I agree to pay you the said commission just the same as if a sale had actually been consummated by you.
For shall be reduced to 6% if no sale

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS CONTRACT.

Facsimile transmission of any signed original document, and retransmission of any signed transmissions, shall be the same as delivery of an original.

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received read and understood the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER(s) and Buyer(s), a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, Individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of

EXHIBIT

11 G 11

Page 2

any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship. SELLER does not consent to allow the BUYER'S Agents and/or Limited Dual Agents to show property and to allow the Broker to share brokerage fees as determined by the Broker with BUYER'S Agents and/or Limited Dual Agents.

SELLER NOTIFICATION AND CONSENT TO RELEASE FROM CONFLICTING AGENCY DUTIES: SELLER acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other Buyers and for Sellers in the sale of the property. SELLER has been advised and understands that it may create a conflict of interest for the Broker to introduce Buyers to Seller Client's property because Broker could not satisfy all of its Client duties to both Buyer Client and SELLER Client in connection with such a showing or any transaction which resulted.

Based on the understandings acknowledged, SELLER makes the following election: (Make one selection only)

Single Agency SELLER does not want Broker to introduce interested BUYER Clients to Client SELLER'S property and hereby releases Broker from any Single Agency responsibility or duty under the agency agreement to do so. Broker shall be under no obligation or duty to introduce the BUYER to any Client SELLER'S property.

Limited Dual Agency SELLER does want Broker to introduce any interested client of Broker to Client SELLER'S property and hereby agrees to relieve Broker of conflicting agency duties including the duty to disclose confidential information known to the Broker at that time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the Buyer and Seller in the introduction of buyer to such client SELLER'S property and in the preparation of any contract of sale which may result. It is agreed that the Seller shall be notified by Broker whenever a Buyer Client of Broker desires to see Seller's property.

In consideration of the foregoing Listing and Authorization the undersigned Broker agrees to use diligence in procuring a Buyer. The SELLER agrees to provide good and marketable title to the property at the time of closing.

Seller Reserves right to sell to Derek & Jean Plaster RS 9/21/05

TRANSACTION RELATED SERVICES DISCLAIMER. In order to finalize the sale of the above referenced property, it may be necessary for the SELLER to employ the services of independent professionals to accomplish those tasks required to close the transaction. The Broker or their agents may, during the course of the transaction, identify individuals or entities who perform services. The SELLER understands that the identification of the service providers is solely for SELLER convenience and that the Broker or their agents are not guaranteeing or assuring that the service provider will perform its duties in accordance with the SELLER expectations.

Accepted: Rowena Strain
by Knipe Land Company, Inc. 9.1.2005
Broker

Richard H. Plaster 9/21/05 (SEAL)
Sharon A. Plaster 9/21/05 (SEAL)
Owner / Date

Owner's Address _____ City _____ State _____ Phone _____
Owner's Address _____ City _____ State _____ Phone _____

FOR VALUE RECEIVED, the above broker's employment hereby is renewed and extended to and including _____, 20____
Accepted: Knipe Land Company, Inc. _____, 20____ (SEAL)
by _____ (SEAL)
Broker Owner

Contact Information:

Main Office:
Knipe Land Company, Inc.
Box 1031
Boise ID 83701
Phone (208) 345 - 3163 Fax (208) 344-0936
www.knipeland.com

FAX 344-0936

KLC02105

789

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
7311 Potomac Drive
Boise, ID 83704

September 26, 2007
File No: NCS-319205-BOJ (ab)

Attention: Amy Bishop


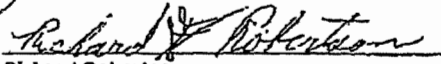
You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000.00 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

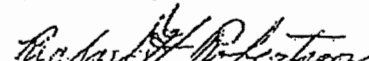
Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.


Johnnie Robertson

Richard Robertson

Robertson Kennels, Inc.

By: 
Its: President

Knipe Land Company Inc.



Broker

EXHIBIT "H"

10-24-'07 16:10 FROM-Knipe Land
Oct 24 07 02:23p Richard Robertson
10-24-'07 10:32 Knipe Land

T-015 P002/002 F-038
12081 642-3313 P.C.
T-014 P002/003 F-039

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 206
Boise, ID 83704

October 23, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop

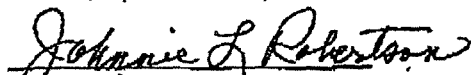
You are hereby instructed to act as follows:


Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

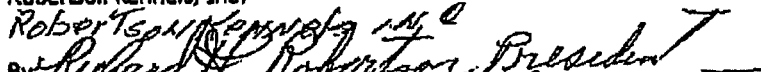
Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These Instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.


Johnnie Robertson

 Oct 24, 2007
Richard Robertson

Robertson kennels, Inc.


By: Richard H. Robertson President
Its: Richard H. Robertson President

Knipe Land Company Inc.



Broker

EXHIBIT "I"

2

INSTRUCTIONS TO ESCROW

First American Title Company of Idaho, Inc.
9465 W Emerald Suite 260
Boise, ID 83704

December 18, 2007
File No: NCS-319205-BOI (ab)

Attention: Amy Bishop


You are hereby instructed to act as follows:

Earnest Money in the amount of \$150,000 is being released to seller. The seller instructs First American, as Escrow holder, to disburse as follows:

Earnest Money in the amount of \$75,000.00 is being released to Robertson Kennels Inc. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

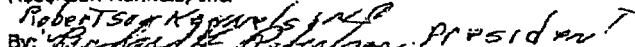
Earnest Money in the amount of \$75,000.00 is being released to Richard and Johnnie Robertson. Pursuant to Listing Agreement/Employment Contract dated 9/1/2005, 5% of that Earnest Money is to be paid, at the time money is released to the seller, directly to Knipe Land Company, Inc. Any money paid to the listing brokers before closing shall be deducted from the commission due at closing.

These instructions may be executed in any number of counterparts, each of which shall be considered as an original and effective as such.


Johnnie Robertson


Richard Robertson

Robertson Kennels, Inc.

By:  President
Its: Richard A. Robertson

Knipe Land Company Inc.

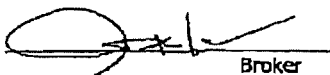

Broker

EXHIBIT "J"

792

Subject: Re: payette property

Date: Monday, February 11, 2008 2:02 PM

From: RobertsonRanch@aol.com

To: <ronastrain@yahoo.com>

Rowena:

The \$22,500.00 is the .05 percent real Astate fee for selling the property and I thought since it didn't sell it would come back to us.

That is interesting on the French company looking for a place to build a plant, maybe somebody should get in touch with them?

Richard

The year's hottest artists on the red carpet at the Grammy Awards. AOL Music takes you there. <<http://music.aol.com/grammys?NCID=aolcmp00300000002565>>



BOX 1031 • BOISE, ID 83701

Phone 208/345-3163

Fax 208/344-0936

www.knipeland.com

MAIN OFFICE • BOISE

Offices/Associates in:

Caldwell, Idaho

Cottonwood, Idaho

McCall, Idaho

Meridian, Idaho

Mountain Home, Idaho

Nampa, Idaho

Payette, Idaho

February 19, 2008

Richard & Jonnie Robertson
& Robertson Kennels
8719 Little Willow Road
Payette, Idaho 83661

Dear Richard & Jonnie:

Though your property's offers have not produced a closed sale yet, we have worked hard to sell your property and provide you with large amounts of non-refundable earnest money to compensate, if the sale did not occur.

Our listing agreement provides that Knipe Land Company is to receive 1/2 of any amount of money forfeited by a buyer. With all the time and effort on Knipe Land Company's behalf, we are asking for 1/2 of the forfeited money. The amounts we have already received would be deducted from the total due.

I appreciate your understanding in this matter.

Sincerely,

Knipe Land Company, Inc.

John Knipe, ALC, Broker

EXHIBIT "L"



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NORTHWEST LAND RESOURCES NEWSLETTER





February 27, 2008

BOX 1031 • BOISE, ID 83701

Phone 208/345-3163

Fax 208/344-0936

www.knipeland.com

MAIN OFFICE • BOISE

Offices/Associates in:

Caldwell, Idaho

Cottonwood, Idaho

McCall, Idaho

Meridian, Idaho

Mountain Home, Idaho

Nampa, Idaho

Payette, Idaho

Richard and Johnnie Robertson
8719 Little Willow Road
Payette, ID 83661

Richard and Johnnie,

I would like to believe people enter into agreements they read and intend to perform. The contractual agreements you signed with our office stated that disbursement of any such funds would be split fifty percent to the seller and fifty percent to the broker. Since we have not received the remainder of the forfeited earnest money due to Knipe Land Company, we feel that, to date, you have not honored the terms of the listing agreement. I am writing to let you know we disagree with your position on this issue and we reserve all our rights. We are open to terms or creative ideas to remedy this.

We understand you have been negotiating and showing property to buyers and not including us. We think this process would be a lot easier for you if you included us rather than excluded us from negotiations and showings. We are moving forward in good faith and we are continuing to honor the terms on our end of the agreement and we will continue to market and show your property.

Respectfully,

John Knipe / President

Knipe Land Co., Inc.



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Publishers of

THE RANGE WRITER

NORTHWEST LAND RESOURCES NEWSLETTER

